



# ENVIRONMENTAL QUALITY COUNCIL

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<b>GOVERNOR STEVE BULLOCK</b>	<b>HOUSE MEMBERS</b>	<b>SENATE MEMBERS</b>	<b>PUBLIC MEMBERS</b>	<b>COUNCIL STAFF</b>
<b>DESIGNATED REPRESENTATIVE</b> PATRICK HOLMES	BRADLEY MAXON HAMLETT--Vice WILLIS CURDY JANET ELLIS STEVE GUNDERSON THERESA MANZELLA KERRY WHITE	CHAS VINCENT--Chair MIKE LANG MIKE PHILLIPS JP POMNICHOWSKI CARY SMITH GENE VUCKOVICH	SCOTT ASPENLIEDER JOHN C. BRENDEN KYLIE PAUL MATT VINCENT	TREVOR GRAFF, Research Analyst JASON MOHR, Research Analyst HOPE STOCKWELL, Research Analyst NADINE SPENCER, Secretary ERIN BILLS, Legal Staff JOE KOLMAN, Legislative

## MINUTES LOG

May 29, 2018  
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. CHAS VINCENT, Chair  
REP. BRADLEY MAXON HAMLETT, Vice Chair

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

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

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

**COMMITTEE MEMBERS EXCUSED**

SEN. MIKE PHILLIPS

**STAFF PRESENT**

HOPE STOCKWELL, Research Analyst  
NADINE SPENCER, Secretary  
ERIN BILLS, Legal Staff  
JOE KOLMAN, Legislative Environmental Analyst

**VISITORS' LIST (Attachment 1)**

**AGENDA (Attachment 2)**

**COMMITTEE ACTIONS**

The Environmental Quality Council (EQC):

- Adopted the minutes from March 21-22;
- Voted to put LCDOG2 out for public comment.

**CALL TO ORDER AND ROLL CALL**

00:00:01 Sen. Vincent called the meeting to order at 9:47 a.m. The secretary called the roll. (Attachment 3) Sen. Phillips was excused.

**ADMINISTRATIVE MATTERS**

**Budget Review**

00:01:28 Joe Kolman, environmental analyst, Legislative Services Division (LSD), provided an update on the budget.  
00:01:58 Mr. Kolman introduced Andrew Mathiason, a student at Carroll College, and said he will be working as an intern in the LSD.

**Adoption of EQC Minutes from March**

**Motion/Vote**

00:02:26 Rep. Ellis moved to approve the minutes from March 21-22. The motion carried unanimously by voice vote of those present and voting.

**WATER POLICY COMMITTEE UPDATE**

00:02:58 Jason Mohr, research analyst, LSD, provided information on the Water Policy Interim Committee (WPIC) meeting on May 21-22 in Bozeman.

Public comment          None

EQC questions and discussion

- 00:07:20      Rep. Curdy asked Mr. Mohr about the list of gauging stations compiled by Paul Azevedo, Water Management Bureau chief, Water Resources Division, DNRC, and if the study bill will look at what stations need to be kept online in the future. **(Exhibit 1)**
- 00:08:42      Rep. Curdy said he talked to the hydrologist at the National Weather Service about the impact that losing gauging stations has on their ability to model flood levels in rivers. He said it is important that the WPIC work with agencies to try and keep the gauging stations.
- 00:09:36      Mr. Holmes entered the meeting at 9:55 a.m.
- 00:09:45      Rep. Ellis asked Mr. Mohr about the administrative rule change on the definition of a combined appropriation.
- 00:11:07      Sen. Pomnichowski asked Mr. Mohr about attempts by the Montana Water Court to make the 2020 deadline.
- 00:13:23      Sen. Pomnichowski asked Mr. Mohr about the water compacts that need to be approved by Congress and how that affects the decrees that the Water Court is tasked with making.
- 00:14:48      Sen. Vincent asked Mr. Mohr if the Water Court has made a formal request to extend the deadline for completing temporary preliminary decrees.
- 00:15:45      Sen. Vincent asked about the proposed legislation on the change process.
- 00:19:28      Rep. Curdy asked Mr. Mohr if the WPIC discussed the upcoming meeting of the Columbia River Treaty Commission.
- 00:20:02      Rep. Hamlett asked Mr. Mohr if the WPIC discussed adding more stream gauges.
- 00:21:12      Rep. Hamlett asked Mr. Mohr about the possibility of adding gauges in an effort to keep the arctic grayling off of the endangered species list.
- 00:22:33      Rep. Hamlett commented on the need for more stream gauges and on tribal water compacts.
- 00:23:54      Rep. Hamlett commented on the exempt from filing claims.

**ENERGY & TELECOMMUNICATIONS INTERIM COMMITTEE UPDATE**

- 00:24:22      Trevor Graff, research analyst, LSD, provided information on the Energy and Telecommunications Interim Committee meeting on May 17-18 and the bill drafts approved for public comment.

Public comment          None

EQC questions and discussion          None

**NATURAL HERITAGE PROGRAM FUNDING**

- 00:30:59      Sen. Vincent provided an introduction and said the committee received information on the Natural Heritage Program (NHP) funding. **(Exhibit 2)**

- 00:31:11 Mr. Kolman said at its last meeting the Council discussed providing some funding for the NHP and that it's looking for \$350,000 in new funding to sustain the program.
- 00:32:24 Mr. Kolman discussed LCNHP1. [\(Exhibit 3\)](#)
- 00:34:18 Mr. Kolman discussed LCNH2a and LCNH2b. [\(Exhibit 4\)](#)
- 00:35:50 Mr. Kolman discussed LCHP3a. [\(Exhibit 5\)](#)

#### Public comment

- 00:37:34 Jennie Stapp, state librarian, said she is available for questions.
- 00:37:50 Stewart Doggett, Montana Lodging and Hospitality Association
- 00:39:04 Bryce Christiaens, noxious weed coordinator, Missoula County; chair, Montana Invasive Species Council

#### EQC questions and discussion

- 00:39:55 Mr. Brenden said he is opposed to using money from the bed tax to fund the program and that other options need to be considered.
- 00:41:25 Mr. Brenden commented on current advertising being done by the state library and the cost.
- 00:42:18 Sen. Vincent said the amount for funding the program would be a percentage of the existing bed tax not an additional tax increase. Mr. Brenden said he is concerned about diverting money.
- 00:42:51 Sen. Lang asked about funding for the Department of Commerce. Sen. Vincent said the Council can get the information later.
- 00:43:21 Sen. Lang commented on finding a way to fund the program through the Department of Commerce rather than the bed tax.
- 00:44:20 Sen. Vincent asked Mr. Doggett about the tax diversions made in SB 309 (2017) and SB 261 (2017).
- 00:45:21 Rep. Ellis asked Ms. Stapp about the budget and how the core funding amount is arrived at and if the EQC can do anything to make it more reflective of its usage and benefits.
- 00:47:04 Rep. Ellis asked Ms. Stapp about how the determination is made for the amount of money each agency gives to the NHP.
- 00:48:12 Rep. Ellis asked Ms. Stapp about the ability to reevaluate agency usage.
- 00:50:11 Rep. Ellis asked Ms. Stapp if the State Library or the EQC could request a reevaluation of agency use.
- 00:51:45 Sen. Vincent commented on trying to measure and quantify use.
- 00:52:37 Rep. Ellis said she wanted to focus on the four agencies that do the core funding.
- 00:53:21 Rep. Hamlett commented on funding and said it will be difficult to get money from the bed tax. He said the fixed fee may need to be increased to account for increases by agencies that assess fees on construction projects and are obligated to pay a fee to the library. He said a general fund allotment may be needed to pick up the shortfall.

#### Next Steps for Study

- 00:55:58 Sen. Vincent opened discussion on direction for staff and commented on LCNH2a and LCNH2b and about funding through the Department of Commerce.

- 00:57:24 Sen. Pomnichowski asked Ms. Stapp about the line item where funding for the state library comes from in HB 2.
- 00:58:20 Sen. Pomnichowski asked Ms. Stapp about an effort to appeal to the Commissioner of Higher Education to increase the line item in the budget.
- 00:59:24 Sen. Pomnichowski said she agrees that the bed tax is probably not a good source for funding and commented on the bill drafts.
- 01:01:49 Rep. Curdy asked Ms. Stapp about the amount of data use from high schools and middle schools. Ms. Stapp redirected the question to Bryce Maxell, program coordinator, NHP.
- 01:03:21 Rep. Curdy asked Mr. Maxell about contacting the Office of Public Instruction (OPI) as a funding source.
- 01:04:41 Rep. Hamlett commented on problems with trying to obtain funding from education. He said he recommends seeking an increase from the general fund.
- 01:05:49 Sen. Vincent said he recommends obtaining funding from an existing source and asked the committee if they were in agreement.
- 01:07:11 Rep. Hamlett said he recommends looking into obtaining funding from OPI.
- 01:07:50 Sen. Vincent commented on funding the program through existing sources.
- 01:08:15 Rep. White asked Mr. Holmes if funding the NHP is a priority in the Governor's office.
- 01:09:15 Mr. Brenden commented on redirecting funds currently used to pay administrative fees to the Department of Administration to fund the program.
- 01:09:53 Ms. Stapp commented on efforts to obtain funds from their partners and said they are looking for base funding.
- 01:11:29 Sen. Vincent said the Council can discuss direction for staff at the meeting tomorrow.

## **STATE PARKS PROGRAM EVALUATION**

### **Parks and Recreation Board Update**

- 01:12:26 Angie Grove, chair, Parks and Recreation Board, thanked the Council members and staff and provided an update on efforts to improve the state park system.
- 01:23:34 Beth Shumate, State Parks Division administrator, Department of Fish, Wildlife, and Parks (FWP), provided information on the State Parks Adventure Challenge.

### **Parks In Focus Update**

- 01:26:43 Martha Williams, director, FWP, provided an update on the Parks In Focus effort.
- 01:28:47 Sen. Vincent commented on the commission and discussed the meeting that was held in Region 1.
- 01:31:14 Ms. Williams presented a video about FWP's new branding effort.
- 01:33:04 Sen. Vincent asked Ms. Williams about how the video was created.

### **Parks Audit Report**

- 01:34:05 John Harrington, performance auditor, Legislative Audit Division (LAD), provided information on the performance audit. **(Exhibit 6)**

### **Good Neighbor Policy Review**

01:48:26 Hope Stockwell, research analyst, LSD, said the committee received a copy of the State Parks program evaluation and provided an overview of the section on the good neighbor policy. **(Exhibit 7)**

### **OHV and Snowmobile Gas Tax Increase Proposals**

01:51:41 Ms. Stockwell discussed OHV1. **(Exhibits 8)**

01:53:35 Ms. Stockwell discussed Snowmobile1. **(Exhibits 9)**

### **Public comment**

01:54:43 Bob Walker, chair, Montana Trails Coalition; advisor, Montana Trails, Recreation, and Park Association

01:58:03 Bob Gilbert, executive director, Montana Walleyes Unlimited

02:03:47 Mike Sedlock

02:04:33 Darryl James, executive director, Montana Infrastructure Coalition

02:09:11 Cary Hegreberg, executive director, Montana's Contractors' Association

### **EQC questions and discussion**

02:11:48 Mr. Brenden thanked Ms. Stockwell for the report and asked about the current amount of money that State Parks is receiving from the \$6 opt-in fee on the motor vehicle registrations. Ms. Stockwell said she will get the information.

02:12:23 Mr. Brenden said he recommends increasing the opt-in fee.

02:13:20 Sen. Vincent asked if the Council wanted to recess and continue the discussion after lunch. Without objection, the Council decided to continue.

02:14:28 Rep. White said the department's response to the audit indicates that the 2011 Legislature considered a bill to move State Parks to the Department of Commerce. Rep. White said it was HB 454 (2017). He asked about the status of the next phase of the State Parks trail inventory that will look at motorized and nonmotorized trails used in summer. Ms. Williams redirected the question to Ms. Shumate.

02:16:49 Rep. White said the audit report indicates there was an ongoing lack of department oversight of the Parks Division budget and asked Mr. Harrington if department refers to an individual or a division and who the responsible party was.

02:17:43 Rep. White asked Mr. Harrington about the reference in the audit report that indicates leadership made an assumption that divisions were spending their budgets according to one member of management. He asked about the identity of the one member of management.

02:18:41 Rep. White asked Ms. Stockwell about the Land and Water Conservation Fund Grants (LWCF) and if the state will be ineligible to receive LWCF funds in 2019. Ms. Stockwell redirected the question to Ms. Shumate.

02:20:00 Rep. White asked Ms. Shumate to provide a timeline for receiving the LWCF and commented on possible legislation and proposals from the department on defining the board's duties.

02:21:12 Rep. White commented on opposition from the Montana Infrastructure Coalition regarding gas allocation for OHV and snowmobile use.

02:23:24 Rep. Ellis asked Ms. Williams about the process that will be used to identify and clarify the inconsistency in statutes.

02:25:06 Rep. Ellis asked Ms. Stockwell to provide a breakdown for the snowmobile program on the number of applicants that requested funding from the grant program and how many were successful. Ms. Stockwell said she will.

02:26:07 Rep. Curdy asked Ms. Grove about connecting with outdoor business providers in the state and developing private partnerships.

02:28:54 Rep. Curdy asked Ms. Grove about the number of people who opt-out of the \$6 state park fee on motor vehicle registrations.

02:29:34 Sen. Lang asked Ms. Grove about the State Parks Foundation.

02:31:47 Sen. Lang commented on support for recreation in the state and for state parks.

02:34:17 Mr. Vincent asked Mr. Harrington about the purchase in 2016 of a \$100,000 software system to improve the management and maintenance of parks that was never implemented and if a new system will be needed.

02:35:55 Mr. Vincent redirected his question to Ms. Williams.

02:36:55 Mr. Vincent said he recommends that FWP's chief information officer be consulted when the next software system is considered for purchase.

02:37:22 Sen. Vincent asked Ms. Williams about language to clarify the roles and responsibilities of the Parks and Recreation Board and if it needs to be done legislatively.

02:39:17 Sen. Vincent asked Ms. Grove about the board's position regarding the changes needed to clarify language.

02:40:02 Sen. Vincent asked Ms. Shumate about allowing outside organizations to build trails using FWP funding sources.

02:43:00 Sen. Vincent asked Mr. Hegreberg about opposition from the Contractors' Association if its members were able to participate in creating infrastructure within the parks.

02:45:57 Mr. Brenden commented on work done by a member of the Contractors' Association near Kalispell.

02:46:30 Rep. Hamlett commented on HB 324 (2017) and moving forward.

02:58:24 Rep. Hamlett said he recommends that the LAD continue to find out what happened with the state appropriated money and why it was not spent.

03:00:55 Recess for lunch at 12:48 p.m.

03:05:35 Reconvened at 1:35 p.m.

#### **PITTMAN-ROBERTSON/DINGELL-JOHNSON TASK FORCE UPDATE**

03:05:56 Ms. Williams provided an update on the Joint Federal/State Task Force on Wildlife and Sport Fish Restoration. She offered to demonstrate how excise taxes on guns and ammunition and sports fish tackle have funded state wildlife programs and restoration of wildlife species and said the model can be replicated for recreation. Sen. Vincent said it can be done at the next EQC meeting.

03:08:07 Ms. Williams said she joined the task force in order to be able to have a say in how the funds from Pittman-Robertson (P-R) and Dingell-Johnson (D-J) are used.

Public comment      None

### EQC questions and discussion

03:11:22 Rep. Hamlett asked Ms. Williams about concerns from states because of less money available from P-R funding.

## **AQUATIC INVASIVE SPECIES PROGRAM EVALUATION**

### **Montana Invasive Species Council Update**

03:12:37 Bryce Christiaens, chair, Montana Invasive Species Council; manager, Missoula County Weed District, provided an update from its meeting last week in Helena.

03:13:21 Mr. Christiaens discussed recommendations from the e-DNA science advisory panel.

03:15:50 Mr. Christiaens discussed the law review of current statutes to address all invasive species in Montana.

03:22:31 Mr. Christiaens discussed the invasive mussel economic impact study.

03:23:06 Mr. Christiaens said the Governor's Summit on Invasive Species is scheduled for November 15-16 and is focused on the challenges identified through the law review. He said in coordination with the Western Governor's Association a summit is scheduled for November 14 that will focus on early detection and rapid response.

### **FWP Update**

03:24:15 Ms. Williams introduced Tom Woolf, Aquatic Invasive Species (AIS) Bureau chief, FWP.

03:24:36 Mr. Woolf provided information on the AIS inspection stations, the certified boater program, and early detection monitoring.

03:27:39 Mr. Woolf discussed the education and outreach campaign.

03:28:29 Mr. Woolf discussed other efforts.

### **Program Funding Options**

03:30:43 Ms. Stockwell provided copies of the public comments received on the AIS funding options. **(Exhibit 10)**

03:31:12 Ms. Stockwell said the Council will discuss the material that Council members received in the manilla folders.

03:31:29 Ms. Stockwell said Montana's two funding sources for the AIS program will sunset in the next two years. She said that the Council will consider additional information to help narrow down any funding source recommendations it might make to the 2019 Legislature.

03:32:12 Ms. Stockwell said she provided estimates on the impacts of changing the pricing of the prevention pass. **(Exhibit 11)**

03:32:53 Ms. Stockwell discussed trends in 2-day and 10-day nonresident fishing license sales **(Exhibit 12)** and said the Council received information that shows the options when changing the pricing points. **(see Exhibit 11)**

03:35:04 Ms. Stockwell said the Council received a copy of the watercraft fee scenarios. **(Exhibit 13)**

03:36:22 Ms. Stockwell discussed data from the Department of Justice, Motor Vehicle Division, on the type of watercraft registered in Montana. **(Exhibit 14)**

03:38:17 Ms. Stockwell said the Council received data on the estimated annual fuel consumption per motorboat. **(Exhibit 15)**

- 03:40:23 Ms. Stockwell discussed the estimated gas tax revenue generated by motorboat use in Montana, FY 2020. **(Exhibit 16)**
- 03:41:50 Ms. Stockwell discussed administrative costs related to the different options.
- 03:44:24 Ms. Stockwell said she has a live interactive presentation that the EQC can plug funding proposals into to see how the estimated revenue would add up. She provided sample funding scenarios. **(Exhibit 17)**

#### Public comment

- 03:45:29 Mr. Gilbert

#### EQC questions and discussion

- 03:55:54 Mr. Brenden said he is concerned about the administrative costs and that there needs to be more people involved on the ground. He discussed his concern regarding eastern Montana and Canada and the financial impact of AIS.
- 03:59:31 Sen. Vincent asked Mr. Christiaens about the law review and if they will have recommendations for legislation at the EQC meeting in July.
- 04:00:21 Sen. Vincent asked Mr. Christiaens about the focus of the economic study.
- 04:00:58 Sen. Vincent thanked Ms. Stockwell and said the Council can use the interactive presentation at the meeting tomorrow when it considers the different scenarios.
- 04:01:22 Recess
- 04:20:59 Reconvene

#### **DOG TRAINING IN UPLAND GAME BIRD AREAS**

- 04:21:13 Mr. Kolman provided an overview of the two sections of the bill that were repealed. **(Exhibit 18)**
- 04:22:45 Mr. Kolman discussed current law.
- 04:24:33 Mr. Kolman discussed LCDOG1. **(Exhibit 19)**
- 04:26:37 Mr. Kolman discussed LCDOG2. **(Exhibit 20)**

#### Public comment

- 04:27:32 John McIltrot, dog trainer, Broadview
- 04:30:37 Pat Howe
- 04:31:30 Tana Kradolfer

#### EQC questions and discussion

- 04:33:38 Rep. White commented on the section in statute that deals with hunting mountain lions and the requirement that dogs be on a 50-foot leash.
- 04:34:20 Rep. White said he supports the bill drafts and that he received public comment on putting sideboards on the permit after it has been approved.
- 04:35:46 Rep. Ellis asked Ms. Williams about the difference in the current statute that states the director may refuse an application and the draft legislation that states the department may refuse an application. She also asked if any applications have been refused.
- 04:37:18 Rep. Ellis asked Mr. Kolman about permit systems in other states that implement dog training.
- 04:40:13 Mr. Kolman commented on the reason why he updated the language in the bill draft and changed "department" from "director".

04:41:08 Mr. Aspenlieder commented on current law and the proposed bill drafts and said he will make a motion after the discussion that the committee bill strike in its entirety the field trial permitting requirements and the dog training requirements from law.

04:43:40 Mr. Brenden commented on the draft bill and said it is another way to regulate private property rights.

04:47:53 Rep. Curdy asked Ms. Kradolfer about conducting field trials during nesting season.

04:49:36 Rep. Curdy asked Ms. Williams if the department has had any issues with people training dogs during nesting season.

04:50:14 Rep. Manzella asked Ms. Williams about LCDOG2 and who, other than a peace officer and game warden, is authorized to enforce FWP laws and where they receive the authorization from.

04:51:12 Sen. Pomnichowski said both bill drafts are labeled LCDOG1 and LCDOG2.

04:51:41 Rep. Manzella said she is referring to the gray copy labeled LCDOG1. Ms. Williams said she did not know who "other person authorized" would include.

04:52:00 Rep. Manzella redirected her question to Mr. Kolman.

04:52:25 Ms. Williams said it could be someone the department has a memorandum of understanding with.

04:52:34 Sen. Vincent said the Council can get the information.

04:53:15 Sen. Pomnichowski asked Mr. Kolman who is required to get a permit.

04:54:02 Sen. Pomnichowski asked Mr. Kolman if there is a definition or requirement for someone to conduct a field trial.

04:55:02 Sen. Pomnichowski asked Mr. Kolman if the number of dogs allowed in a single trial is addressed in statute.

04:55:33 Sen. Pomnichowski asked Ms. Williams about the bill drafts and if multiple trials can be conducted on a single permit.

04:57:31 Sen. Pomnichowski asked Ms. Williams how the department promulgates rules to implement statute.

04:59:22 Sen. Pomnichowski commented on private property rights and the ability to correct statute.

05:00:39 Sen. Lang asked Ms. Williams about moving forward on the bill drafts and the ability for someone to apply for a permit online.

05:01:55 Sen. Lang asked Ms. Williams about having a requirement for a dual signature with the FWP regional supervisor where the trial will take place.

05:03:18 Sen. Lang asked Ms. Williams to clarify the difference between pen-raised birds that are banded and game birds that are banded. Ms. Williams redirected the question to Ken McDonald, Wildlife Division administrator, FWP.

05:04:51 Rep. Curdy asked Ms. Williams about game birds brought into Montana from other states that could be a potential problem as an invasive species.

05:05:47 Rep. Hamlett said he would like to know, if there are no laws, does the department have discretion to make rules.

05:07:01 Sen. Vincent asked Mr. Kolman to provide the statutory authorization for the promulgation of rules.

05:07:57 Sen. Vincent said his goal is to fix the statute for the department so they are not forced to promulgate a rule on a law they did not think was applicable.

- 05:08:49 Mr. Aspenlieder commented on rules and regulations that are already in place on harassing game birds. He requested that staff draft a bill to repeal the dog trial and the dog training sections of the current statute.
- 05:10:13 Mr. Kolman said the draft would be the sections that repeal the regulations for field trials and dog training.

### **Motion**

- 05:10:49 Mr. Aspenlieder moved to repeal the sections of LCDOG1 and LCDOG2 pertaining to the regulation of field trials and dog training.

### **Substitute Motion/Vote**

- 05:11:18 Rep. White made a substitute motion to approve LCDOG2 for public comment. The substitute motion carried 8-7 with Sen. Smith, Rep. Curdy, Rep. Manzella, Sen. Lang, Mr. Aspenlieder, Mr. Brenden and Sen. Vincent voting no. Sen. Phillips was excused. ([Attachment 4](#))
- 05:12:47 Mr. Kolman said he will bring a corrected copy of the bill draft to the Council and check on the specific rulemaking authority of the department.

### **ENFORCEMENT OF BAD ACTOR MINING LAW**

- 05:13:21 Sen. Vincent said information was provided on legislative histories pertaining to the statute and staff will provide an overview and that Tom Livers, director, Department of Environmental Quality (DEQ), will provide some context and how the law will be applied going forward.
- 05:14:01 Sen. Vincent said two of the mining properties that are part of the notice of violation (NOV) issued by the DEQ are in his district. He said Hecla Mining Company is a client of the firm he works for.
- 05:14:56 Mr. Vincent said the reason he requested the agenda item is to find out the intent of how the law is being enacted by DEQ and why now.
- 05:18:56 Erin Bills, legal staff, LSD, said she provided a memo on how the bad actor statutes were drafted by the legislature. ([Exhibit 21](#))
- 05:20:33 Sen. Vincent said that because of ongoing litigation some things may not be able to be discussed.
- 05:21:10 Mr. Livers discussed the provisions of the Metal Mine Reclamation Act and the determination that Phillips Baker, CEO, Hecla Mining Co., was in violation of the provision of the act because of his previous association with Pegasus Gold Corp.

### **Public comment**

- 05:30:24 Jerry Bennett, former state legislator; Lincoln County commissioner

### **EQC questions and discussion**

- 05:35:31 Rep. Gunderson said his company is a mine contractor and has worked with Mines Management, the parent company for Montanore Mine.
- 05:36:00 Rep. Gunderson asked Mr. Livers if DEQ has employed people who have worked for Pegasus or any of its subsidiaries.
- 05:36:31 Rep. Gunderson asked Mr. Livers about the employee's working capacity and whether it is a double standard.

05:40:10 Rep. Gunderson asked Mr. Livers about applying the NOV to Hecla and the environmental implications if the permit is pulled on the Montanore Mine that is currently in exploration.

05:41:42 Rep. Gunderson asked Mr. Livers about the legal obligation for a mining company to continue reclamation after the permit is pulled.

05:43:42 Rep. Ellis asked Mr. Livers about other states that have similar bad actor provisions. Mr. Livers said he will find out.

05:44:43 Rep. Ellis asked Mr. Livers if the state did not have a bad actor provision in statute if there is any other way to get reimbursement for its reclamation costs.

05:46:58 Rep. Ellis asked Mr. Livers about the timeframe for updating its bonding calculations to cover reclamation costs for hardrock and coal mining sites.

05:49:51 Rep. Ellis asked Mr. Livers about the bond for Montana Tunnels in Basin.

05:52:53 Mr. Aspenlieder asked Mr. Livers about the dates when the Pegasus mine was operational.

05:53:57 Mr. Aspenlieder asked Mr. Livers about the dates when Mr. Baker was employed by Pegasus and if he was employed during the bankruptcy and the forfeiture of the bonds.

05:54:59 Mr. Aspenlieder commented on companies that have multi-state operations and the people who are listed as principles, in the filings on the Secretary of State's website, as the point of contact and that they have no bearing on the operation of the company as a whole. Mr. Livers commented on corporate liability structure.

05:59:27 Sen. Vuckovich asked Mr. Livers about what happened to Hecla once it was listed as a bad actor and if they are still operating.

06:01:51 Sen. Vuckovich asked Mr. Livers about the purpose of the law if it doesn't affect a company's operation.

06:03:46 Mr. Brenden asked Mr. Livers about the mining companies in northwestern Montana and the number of years taken to go through the permitting process.

06:05:35 Mr. Brenden commented on the benefits of mining to the state and on labeling bad actors.

06:09:53 Ms. Paul commented on Mr. Baker's role at Pegasus and its subsidiaries.

06:10:54 Sen. Vincent said he wants to look at the intent of the law and how it is practically applied going forward and the potential ramifications using the definitions that are being administratively created. He asked Mr. Livers if they have pierced the corporate veil by applying the law to Mr. Baker.

06:13:32 Sen. Vincent asked Mr. Livers if a general manager of a mine has a controlling interest and would be held liable for its operations.

06:14:27 Sen. Vincent asked Mr. Livers about doing reclamation on a mine without an operating license.

06:16:24 Sen. Vincent asked Mr. Livers about the Troy mine and what DEQ's determination would be if the mine decided to go into operations again and a letter was sent indicating they were in non-compliance with the bad actor statutes.

06:18:48 Sen. Vincent asked Mr. Livers about the intent of the law and if it needs to be changed.

06:25:29 Rep. Hamlett asked Mr. Livers if the state has the authority to stop the sale of a mine to another entity.

06:26:53 Rep. Hamlett asked Mr. Livers if the DEQ can require the new owner of a mine to purchase a higher bond than the existing one.

06:28:55 Rep. Hamlett asked Mr. Livers about the actual cost for every million dollars of a bond to a company that has to purchase it. Mr. Livers said he will provide the information tomorrow.

06:29:47 Rep. Hamlett requested that legal staff provide information on bankruptcy laws.

06:33:37 Rep. Curdy asked Mr. Livers if the state sued Pegasus Corp. when they stopped operations in the late 1990's.

06:34:22 Rep. Curdy asked Mr. Livers if the principles of Pegasus were named in the litigation. Mr. Livers said he can find out.

06:34:40 Rep. Curdy asked Mr. Livers how much the litigation with Pegasus has cost the state.

06:35:21 Rep. Curdy asked Mr. Livers to provide the information he requested. Mr. Livers said he will try and have it for the meeting tomorrow.

06:36:02 Recess

06:56:34 Reconvene

## **SAGE GROUSE CONSERVATION PROGRAM UPDATE**

### **Habitat Quantification Tool and Mitigation Policy Progress**

06:56:59 Carolyn Sime, program manager, Sage Grouse Habitat Conservation Program, provided an update on the habitat quantification tool (HQT) and mitigation policy. She said the Montana Sage Grouse Oversight Team (MSGOT) met on May 4 and decided not to initiate rulemaking.

06:57:58 Ms. Sime said the HQT technical manual was made available to stakeholders on the website and they had another meeting on May 16. She said the stakeholders were given an opportunity to provide additional written comment after the meeting.

07:00:04 Ms. Sime discussed next steps.

Public comment          None

### **EQC questions and discussion**

07:00:38 Sen. Lang asked Ms. Sime about the status of the peer review team.

07:03:45 Sen. Lang commented on a nomination to the peer review team and on the program.

07:08:10 Mr. Aspenlieder asked Ms. Sime about the peer review team and if its comments are made public, how to know if the department will enact any of the comments or suggestions, and the process for making changes based on peer review comments.

07:11:38 Mr. Aspenlieder asked Ms. Sime about the list of peer review team members and how many came from the department and the program and how many came from suggestions from the industry and stakeholders.

07:13:34 Mr. Aspenlieder commented on his concerns regarding asking for review, comments, and justification from people in academia.

07:15:14 Rep. White asked Ms. Sime about the ratios for the HQT.

07:16:01 Sen. Vincent left the meeting and Rep. Hamlett assumed the chair.

07:19:12 Rep. White asked Ms. Sime about projects in core sage grouse habitat in the aftermath of fire.

07:21:57 Rep. Hamlett asked Mr. Holmes about the opinion at the Governor's office on the progress being made.

07:22:25 Sen. Vincent returned to the meeting and resumed as chair.

07:23:54 Rep. Hamlett discussed his concerns.

07:24:41 Rep. Hamlett asked Ms. Sime about addressing predation and if they have requested a variance from the U.S. Fish and Wildlife Service to reduce the number of common raven.

07:27:55 Rep. Hamlett asked Sen. Lang about predation and if it is important to the survival of sage grouse.

07:29:50 Rep. Hamlett asked Ms. Sime when the HQT will be available.

07:32:09 Rep. Hamlett asked Ms. Sime about angst from stakeholders that would like to weigh in on the peer review process.

07:33:14 Rep. Hamlett commented on peer review and working together on a resolution.

#### **MULE DEER PERMITS**

07:34:35 Ms. Williams said the Council was provided with the additional data it requested on mule deer permits. **(Exhibit 22)** She said Quentin Kujala, Wildlife Habitat Bureau coordinator, FWP, is available to answer questions.

#### **EQC questions and discussion**

07:35:23 Sen. Smith thanked Mr. Kujala for the additional data he requested on improving the buck to doe ratio.

07:36:44 Sen. Smith commented on the report that shows what has happened to the buck to doe ratios in some of the unlimited hunting districts. **(Exhibit 23)**

07:38:31 Sen. Smith requested that FWP look at using an unlimited number.

07:39:15 Mr. Kujala said he will get the requested data for the Council and will take the legislative discussion today back to the FWP staff.

07:40:02 Sen. Vincent said changes need to be made to the map for a district in northwest Montana.

07:40:16 Rep. White commented on the data and information provided and on other factors involved.

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

None

#### **RECESS**

07:42:06 Sen. Vincent recessed the meeting at 6:10 p.m.

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