



ENVIRONMENTAL QUALITY COUNCIL 67th Montana Legislature

SENATE MEMBERS

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Steve Hinebaugh
Tom Jacobson
Mike Lang
Cary Smith
Mark Sweeney

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Paul Fielder
Steve Gunderson
Jedediah Hinkle
Jim Keane
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Joe Carroll - Attorney
Joe Kolman - Legislative
Environmental Analyst
Nadine Spencer - Secretary

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John Brenden
Dave Galt
Bradley Hamlett
Monica Tranel
Mike Freeman, Governor
Designated Representative

MINUTES LOG

January 24, 2022
State Capitol Building, Room 137 and Zoom
Helena, Montana

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MEMBERS PRESENT:

Sen. Mike Lang, Presiding Officer (R)
Bradley Hamlett, Vice-Presiding Officer
John Brenden, Public Member
Rep. Willis Curdy (D)
Rep. Paul Fielder (R)
Sen. Pat Flowers (D)
Dave Galt, Public Member
Sen. Steve Hinebaugh (R)
Rep. Jedediah Hinkle (R)
Rep. Jim Keane (D)
Rep. Marilyn Marler (D)
Sen. Cary Smith (R)
Sen. Mark Sweeney (D)
Monica Tranel, Public Member
Mike Freeman, Governor Designated Representative

MEMBERS EXCUSED:

Rep. Steve Gunderson (R)
Sen. Tom Jacobson (D)

STAFF PRESENT:

Joe Carroll, Attorney

Joe Kolman, Legislative Environmental Analyst

Nadine Spencer, Secretary

AGENDA ([Attachment 1](#))**VISITORS' LIST ([Attachment 2](#))****CALL TO ORDER/ROLL CALL**

10:01:31 Sen. Mike Lang called the meeting to order at 10:01 AM. The committee secretary took roll.

ADMINISTRATIVE MATTERS

10:02:43 Joe Kolman, legislative environmental analyst, Legislative Services Division (LSD), commented on the meeting agenda. He said the training day for legislators is Wednesday.

WATER POLICY INTERIM COMMITTEE UPDATE

10:03:28 Jason Mohr, research analyst, LSD, provided an update on the Water Policy Interim Committee (WPIC) meeting last week. He said the committee continued its discussion on HJ28 (2021) the study on erosion on the lower part of the Flathead river.

10:05:26 Mr. Mohr discussed the use of geocodes for assigning a place of use for a water right, the issue regarding the transfer of the ownership of a water right when a property changes hand, and the new process to reflect accuracy in the water right data base.

10:06:25 Mr. Mohr provided an update on the Confederated Salish and Kootenai Tribes (CSKT) water rights compact.

10:08:02 Mr. Mohr provided information on SB358 (2021) moving from numeric nutrient standards to narrative standards.

10:10:19 Mr. Mohr said the WPIC will meet in the coming weeks to consider an initiative to declare sections of the Gallatin and Madison rivers as outstanding resource waters.

10:11:04 Mr. Mohr provided an update on the special committee on HJ37 (2021).

EQC questions and discussion

10:11:23 Sen. Flowers asked Mr. Mohr if the state will remain on a numeric standard until rules are adopted for the narrative standard.

10:12:10 Rep. Fielder asked Mr. Mohr about the location for the HJ37 meeting scheduled for Thursday.

10:12:34 Rep. Keane said information is available regarding work done on stream banks along the Upper Clark Fork river. Mr. Mohr said a statewide study contemplating rules and recommendations elsewhere will be a future topic.

10:14:08 Mr. Hamlett asked Mr. Mohr if part of the issue is new development along the Flathead river.

10:15:41 Rep. Curdy commended Samantha Tappenbeck, interim resource conservationist, Flathead Conservation District, for her presentation on erosion along the lower Flathead River. He encouraged people to watch the presentation for more information.

- 10:16:17 Mr. Brenden said permits are required to put down riprap in Flathead County and that it may be easier for a government agency rather than a private party. He asked Mr. Mohr about the process.
- 10:18:10 Sen. Lang asked Mr. Mohr about a statewide streambank policy and putting together a manual that would satisfy the differences between eastern Montana water and western Montana water. He said the EQC and WPIC need to work together.

ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE UPDATE

- 10:19:34 Trevor Graff, research analyst, LSD, provided an update on the Energy and Telecommunications Committee (ETIC) meeting last Tuesday.
- 10:19:55 Mr. Graff provided an update on SJ3 the study of advanced nuclear reactors.
- 10:23:41 Mr. Graff provided an update on SJ33 the grid capacity study.
- 10:26:49 Mr. Graff provided information regarding the committee discussion on the Public Service Commission (PSC) election districts case.
- 10:27:57 Mr. Graff said the ETIC is taking a field trip in March to the Idaho National laboratories to look at research surrounding advanced nuclear reactors.

EQC questions and discussion

- 10:28:49 Mr. Brenden asked Mr. Graff about the nuclear projects in Washington and Wyoming.
- 10:29:21 Mr. Brenden commented on comparing old nuclear power plants to the present technology.
- 10:30:29 Mr. Galt asked Mr. Graff if the discussion on small modular nuclear reactors included water and water use.
- 10:31:52 Mr. Hamlett asked Mr. Graff if the discussion on nuclear reactors will look at spent fuel stored above ground and the need for security based on a potential risk for terrorism.
- 10:33:17 Mr. Hamlett asked Mr. Graff if there are portions of the old Milwaukee railroad right-of-way that can be used for electrical corridors to the state of Washington.
- 10:34:30 Mr. Hamlett asked Mr. Graff about the percentage of power that needs to be generated to support new technology.
- 10:35:35 Mr. Hamlett said the legislature needs to become more involved in determining election districts for the PSC.
- 10:36:15 Sen. Lang welcomed Rep. Marler to the meeting. He thanked Joe Carroll, staff attorney, and Mike Schneider, remote meeting coordinator, for their assistance.

HJ 27 CONSERVATION DISTRICT FUNDING

Overview

- 10:36:37 Mr. Kolman provided an introduction and said the Council requested more information on how conservation districts are funded and what they do.
- 10:37:01 Mr. Kolman said the Council received information on state and federal funding. **(Exhibit 1)**
- 10:37:57 Mr. Kolman said the Council was sent a link to a video produced by the conservation districts explaining what they do. <https://youtu.be/N-MvPPhswtg>
- 10:38:26 Mr. Kolman said Council members received a report on the Montana Association of Conservation District's (MACD) annual convention in Great Falls. **(Exhibit 2)**

Gallatin Conservation District

10:39:21 Mike Hansen, supervisor, Board of Gallatin Conservation District (GCD)
10:40:50 Becky Clements, district administrator, GCD. [\(Exhibit 3\)](#)

EQC questions and discussion

10:56:09 Rep. Hinkle asked Ms. Clements to explain the distinction between 310 permits the conservation districts work on and approve versus streambank permits by the Department of Fish, Wildlife, and Parks (FWP).
10:57:41 Sen. Hinebauch asked Ms. Clements about a lawsuit involving a 310 permit.
11:00:43 Sen. Flowers thanked Ms. Clements for the conservation district's work and asked about the structure for the budget and where funding comes from.
11:02:40 Mr. Hansen provided additional information.
11:03:13 Mr. Kolman provided information on incidental expenses.
11:04:25 Sen. Flowers asked Mr. Kolman how general fund money, the coal severance tax, federal funds, and mill levies fit into an individual conservation district's funding.
11:05:18 Sen. Lang said the question can be addressed following the presentation from Garfield County.
11:05:35 Ms. Tranel asked Ms. Clements about working with Madison County and addressing issues around Big Sky.
11:08:20 Ms. Tranel asked Ms. Clements about the work the conservation district does and if it makes a difference whether a municipality is incorporated or not.

Garfield County Conservation District

11:09:59 Dean Rogge, chairman, Garfield County Conservation District. [\(Exhibit 4\)](#)
11:24:12 Dusty Olson, administrator, Garfield County Conservation District

EQC questions and discussion

11:32:58 Rep. Hinkle asked Ms. Olson about the grants used to fund the aquatic invasive species (AIS) inspection stations.
11:33:26 Rep. Hinkle asked Ms. Olson what they are finding during inspections.
11:35:08 Rep. Hinkle asked Ms. Olson if the interceptions made at the Flowing Wells inspection station were from out-of-state.
11:36:13 Rep. Hinkle asked Mr. Rogge what they are finding in areas that have not been grazed in 30 years.
11:37:53 Mr. Rogge provided additional information about funding grants.
11:38:33 Sen. Sweeney asked Mr. Rogge the same question by Rep. Hinkle regarding findings on Bureau of Land Management (BLM) and the Charles M. Russell National Wildlife Refuge areas.
11:39:22 Sen. Sweeney congratulated the conservation district for receiving the BLM grazing award.
11:39:37 Rep. Keane commented on funding that was provided by the legislature for the AIS inspection stations.
11:40:41 Ms. Tranel asked Ms. Olson why the conservation district is funding the inspection station in Wibaux.
11:41:39 Ms. Tranel asked Ms. Olson about the 80,000-acre project. Ms. Olson redirected the question to Mr. Rogge.

- 11:43:16 Rep. Curdy asked Mr. Rogge if all the land in the Garfield County district is levied.
- 11:44:23 Rep. Curdy asked Ms. Clements about funding for the conservation district in Gallatin County and if all the land is levied. Ms. Clements redirected the question to Mr. Hansen.
- 11:45:48 Rep. Curdy asked Mr. Hansen if they have been approached by the city of Bozeman or the city of Belgrade about being included within the district and what if any benefit the cities get.
- 11:47:29 Rep. Marler asked about receiving a bigger picture of the overall funding for conservation districts in the state. Sen. Lang said it can be discussed during next steps.

MACD Convention Report

- 11:48:09 Rep. Marler discussed the information provided at the MACD convention in Great Falls.
- 11:49:00 Mr. Hamlett said conservation districts have different priorities based on where they are located. He commented about the concern and need to find ways to replace funding from the coal severance tax.
- 11:50:52 Rep. Keane commented on funding available for conservation districts.
- 11:51:25 Sen. Lang commented on the convention and challenges for conservation districts.
- 11:53:35 Mr. Kolman provided additional information on funding.

EQC questions and discussion

- 11:57:18 Ms. Tranel asked Mr. Kolman about the range and variability of budget planning.
- 11:58:42 Sen. Flowers asked Mr. Kolman if there is a description or a projection on the decline in coal severance tax that could help identify the gap in funding.
- 11:59:22 Rep. Keane said the EQC needs to look at new sources of funding including marijuana.
- 12:00:53 Sen. Lang said the EQC needs to work on a committee bill and its own plan for funding.
- 12:01:14 Mr. Brenden commented on keeping conservation district funding local.
- 12:02:41 Sen. Lang commented on working within the parameters of federal land, state land, and private land.

Public comment

- 12:03:24 Mark Bostrom, administrator, Conservation Resource Development Division, Department of Natural Resources and Conservation (DNRC)

EQC questions and discussion

- 12:06:34 Sen. Flowers asked Mr. Bostrom about the decline in the percentage of the coal severance tax and the projection for the future.
- 12:08:52 Sen. Lang asked Mr. Bostrom to work with staff on putting together factual numbers.
- 12:08:59 Rep. Keane agreed and said a projection is needed for the money from coal, and the general fund, and tied to the growth of inflation.
- 12:09:47 Mr. Brenden said the state will have a \$950 million surplus this year and commented on funding.

Public comment

12:10:34 Rebecca Boslough, MACD
12:13:31 Mr. Rogge

EQC questions and discussion

12:14:12 Mr. Kolman said the Revenue Interim Committee is working on the study of Montana's coal severance tax trust fund. He said he will provide a graphic that looks at conservation district funding in 2021 versus projected funding for 2031. [\(Exhibit 5\)](#)

12:15:06 Recess for lunch
13:21:05 Reconvene

CHRONIC WASTING DISEASE & HUNTING SEASON UPDATE

13:22:07 Ken McDonald, Wildlife Division chief, FWP, provided a summary of chronic wasting disease (CWD) sampling efforts during the last year.

Public comment

None

EQC questions and discussion

13:31:24 Rep. Fielder asked Mr. McDonald how many other states and Canadian provinces have CDW and what they are doing to control it.
13:32:50 Rep. Fielder asked Mr. McDonald how long CWD has been in other states.
13:33:49 Sen. Hinebauch asked Mr. McDonald about the percentage of deer in the Twin Bridges area that have CWD.
13:34:35 Sen. Lang asked Mr. McDonald about the source for funding.
13:35:06 Rep. Hinkle asked Mr. McDonald about hot spots in the state that have a higher prevalence of CWD in mule deer and about data for the area around Joliet and Bridger.
13:36:07 Rep. Hinkle asked Mr. McDonald if the effort to extend the hunting season in those areas brought the percentage down.
13:37:17 Rep. Keane commented on the funding that allowed for CWD testing by the Department of Livestock.
13:37:41 Mr. McDonald thanked the budget subcommittee and the legislature for providing funding.

ELK MANAGEMENT PLAN & SHOULDER SEASON UPDATE

13:38:10 Mr. McDonald provided an update on the elk management plan.
13:42:02 Mr. McDonald discussed shoulder season.

Public comment

13:46:38 Frank Szollosi, executive director, Montana Wildlife Federation
13:48:13 Kevin Ferron, Montana Chapter coordinator, Backcountry Hunters and Anglers

EQC questions and discussion

13:50:34 Rep. Marler asked Mr. McDonald about the biennial season setting process and the public comment the Fish and Game Commission received on the proposed changes to the hunting regulations.

13:54:13 Rep. Marler asked Mr. McDonald about adopting changes to the hunting regulations while still in the process of putting together the elk management plan and if the Commission can default to previous hunting regulations.

13:55:24 Mr. Brenden asked Mr. McDonald about allowing more cow elk permits in districts that have too many elk.

13:57:18 Sen. Flowers said the original rationale for shoulder season was to reduce the population size and to displace elk off private land and onto public land. He asked Mr. McDonald how well that has worked.

13:58:46 Sen. Flowers asked Mr. McDonald why the criteria for shoulder season is not being met.

14:00:32 Hank Warsech, director, FWP, provided additional information regarding Rep. Marler's earlier questions.

14:02:10 Sen. Flowers said a provision in the 2005 plan provided that in circumstances when elk were not available on public land to public hunters, the number of elk would not be included in tallying the total number of elk toward the objective. He asked Mr. McDonald if that will be the same approach in the new plan. Rep.

14:04:30 Fielder commented on the benefit of improving range management on public land.

14:05:29 Ms. Tranel asked Mr. McDonald about reaching the objectives and when concrete measured information will be available so that realistic decisions can be made.

14:08:30 Mr. Brenden commented on shoulder season and said he believes it is a move in the right direction.

14:10:46 Sen. Flowers asked Sen. Lang about taking questions regarding permits for landowners who offer free public hunting or waiting to have it as a future agenda item. He said he would like the department to provide information on the history of 454 permits and how it was managed during the last year.

14:12:11 Sen. Lang ask Mr. Warsech to provide information on Fort Peck during the next presentation.

14:12:28 Rep. Marler said the objectives referred to in the 2005 elk management plan are based on landowner tolerances at the time and were not based on carrying capacity. She asked Mr. McDonald whether the elk shoulder season has been helping to reduce herd size.

14:13:31 Sen. Flowers commented on damage hunts used in the past.

14:13:59 Mr. Brenden responded to Sen. Flowers' comment.

14:14:12 Sen. Lang commented on damage hunts and shoulder season.

14:16:40 Mr. Galt asked Mr. McDonald to provide information on success rates in hunting areas that were significantly damaged by fire.

14:18:00 Mr. Hamlett asked Mr. McDonald about planning hunting seasons to last until the desired number of animals are removed.

14:19:22 Recess

14:36:26 Reconvene

14:36:50 Sen. Lang asked Mr. Warsech to provide a glossary of the definitions for the acronyms mentioned by Mr. McDonald in his presentation.

DFWP REORGANIZATION

- 14:37:08 Mr. Worsech, discussed the reorganization of FWP.
- 14:39:16 Hope Stockwell, Parks and Outdoor Recreation Division administrator, FWP, said she is helping to guide the reorganization process and provided information about the division.

EQC questions and discussion

- 14:44:14 Sen. Lang asked Ms. Stockwell about the reorganization and cooperation from federal agencies working with the state.
- 14:45:39 Rep. Curdy asked Ms. Stockwell who to contact regarding the Americans with Disabilities Act (ADA) compliance for boat docks.
- 14:47:13 Rep. Curdy asked Mr. Worsech about the plans to reorganize hunting districts and if the department will change the direction and organization of the three open biologist positions in Region 2.
- 14:49:43 Rep. Curdy asked Mr. Worsech about the ability to develop a definitive elk management plan without having a full staff of biologists.
- 14:51:23 Rep. Curdy asked Mr. Worsech when the department expects to fill the vacant positions.
- 14:52:08 Rep. Hinkle asked Mr. Worsech about the money that was allocated and the status of the project to build a seawall at Hell Creek State Park.
- 14:53:45 Rep. Hinkle asked Mr. Worsech if the money is still being allocated for the project. Mr. Worsech redirected the question to Ms. Stockwell.
- 14:54:21 Rep. Keane commented on the reorganization and the ability to use Pittman-Robertson funding and asked Mr. Worsech how the department can integrate parks into fish and wildlife.
- 14:55:59 Rep. Keane asked Ms. Stockwell about the ability to do the reorganization at this time when it was not able to be done in the past.
- 14:57:11 Rep. Keane asked Mr. Worsech about integrated funding.
- 14:58:17 Rep. Keane said integration of the department is well overdue.
- 14:58:53 Sen. Flowers asked about the status of the projects for fish cleaning stations at Tiber and Canyon Ferry reservoirs and the fishing dock at Lake Frances. Ms. Stockwell said she will get the information to staff.
- 15:00:07 Mr. Brenden congratulated Ms. Stockwell on her new position.
- 15:00:36 Ms. Tranel asked about the difference between the five State Parks and Recreation Board districts and the seven FWP regions and how it effects the reorganization and management. Mr. Worsech provided information and said the department will adjust accordingly.
- 15:02:00 Ms. Stockwell provided additional information.
- 15:02:50 Mr. Hamlett asked Mr. Worsech how social decisions intersect with biology and which one has greater weight.
- 15:05:14 Mr. Hamlett asked Mr. Worsech to provide a list of all the definitions and terms used for hunting season.
- 15:06:12 Rep. Keane asked Mr. Worsech to provide a chart showing how the reorganization will to work.

Public comment

- 15:06:54 Rod Bullis, Helena Hunters and Anglers Association

RULE REVIEW

15:08:52 Joe Carroll, staff attorney, LSD, provided information on the three rules included in the rule review memo the Council received and two additional rules proposed by FWP. [\(Exhibit 6\)](#)

EQC questions and discussion

15:12:10 Sen. Lang asked Mr. Carroll about any action taken by FWP on the rules after the comment period ended on December 17, 2021.

15:12:44 Rep. Marler asked Mr. Carroll about compliance and using funds provided by the Dingell-Johnson Act.

15:14:12 Sen. Flowers asked Mr. Carroll about MAR Notice No. 12-553 and the status of the walk/wade sections of the Madison River. Mr. Carroll redirected the question to Mr. Worsech.

15:15:46 Sen. Lang asked Sen. Hinebaugh if MAR Notice No. 17-418 pertains to the small hazardous waste sites in eastern Montana. Sen. Lang asked Mr. Worsech if he had any information on the proposed rule. Mr. Worsech redirected the question to Becky Dockter, chief legal counsel, FWP, after she can join the videoconference.

15:16:48 Ms. Tranel asked Mr. Worsech about MAR Notice No. 12-555 and who the members of the citizens advisory committee were and how they were recruited and selected by the department. Sen. Lang said the question can be answered after the Council gets clarification on the previous rule question.

15:17:33 Sen. Lang asked Denise Brunett, Department of Environmental Quality (DEQ), if MAR Notice No. 17-418 pertains to the low hazardous waste sites in eastern Montana.

15:18:31 Ms. Tranel repeated her earlier question regarding MAR Notice No. 12-555. Mr. Worsech said he will find out.

15:19:28 Ms. Dockter said she will also find out and get an answer for the committee.

15:20:25 Sen. Flowers asked Ms. Dockter about MAR Notice No. 12-553 and the status of the walk/wade sections of the Madison River.

BISON UPDATE

15:24:28 Marty Zaluski, state veterinarian, Department of Livestock, provided an update.

15:25:39 Mr. Zaluski provided an update on the Interagency Bison Management Plan (IBMP).

15:30:26 Mr. Zaluski provided information on the new environmental impact statement (EIS) being worked on by Yellowstone National Park.

EQC questions and discussion

15:34:37 Sen. Flowers asked Mr. Zaluski about the EIS and if the approach is parallel to what was done in 2000 in terms of cooperation between agencies.

15:36:41 Sen. Flowers commented on cooperation.

15:37:12 Rep. Curdy asked Mr. Zaluski about the sex distribution of the bison transferred to Fort Peck.

15:37:50 Rep. Curdy asked Mr. Zaluski to describe the last stage of testing at Fort Peck.

15:40:25 Rep. Curdy asked Mr. Zaluski if there is any new information about a brucellosis vaccine for wild bison.

15:41:02 Mr. McDonald discussed FWP's role in bison management.

EQC questions and discussion

- 15:43:49 Sen. Lang asked Mr. Zaluski about rules regarding transportation of bison across county lines to Fort Peck and if there is a paper trail of sex and age.
- 15:45:13 Sen. Lang asked Mr. Zaluski about anaplasmosis in wildlife. Sen. Lang requested that the EQC be kept updated.
- 15:47:07 Sen. Lang commented on the tuberculosis outbreak in north central Montana.
- 15:47:55 Mr. Zaluski acknowledged the people who helped get the work done.
- 15:48:31 Mr. Hamlett asked Mr. Zaluski if bison are microchipped after being captured.

DEMONSTRATION OF NATURAL HERITAGE PROGRAM INTEGRATION OF MEPA DOCUMENTS

- 15:49:50 Mr. Kolman provided an introduction.
- 15:53:01 Bryce Maxell, program coordinator, Montana Natural Heritage Program, State Library, provided a demonstration of the Natural Heritage Map Viewer application and accessing Montana Environmental Policy Act (MEPA) documents.

EQC questions and discussion

- 15:59:27 Sen. Lang asked Mr. Maxell about the need to back up documentation with on the ground surveys.
- 16:01:35 Sen. Lang asked Mr. Maxell about the website address.
- 16:01:55 Mr. Galt asked Mr. Maxell if the DEQ documents on watershed information includes information on water quality.
- 16:03:00 Rep. Curdy asked Mr. Maxell about funding for the program.
- 16:04:10 Mr. Hamlett commented on the need for continued funding.

Public comment

None

PUBLIC COMMENT ON ANY MATTER NOT ON AGENDA BUT WITHIN THE JURISDICTION OF EQC

None

ADJOURNMENT

- 16:05:53 Sen. Lang adjourned the meeting at 4:05 p.m.