



## ENVIRONMENTAL QUALITY COUNCIL 67th Montana Legislature

### SENATE MEMBERS

Pat Flowers  
Steve Hinebauch  
Tom Jacobson  
Mike Lang  
Cary Smith  
Mark Sweeney

### HOUSE MEMBERS

Willis Curdy  
Paul Fielder  
Steve Gunderson  
Jedediah Hinkle  
Jim Keane  
Marilyn Marler

### COMMITTEE STAFF

Joe Carroll - Attorney  
Joe Kolman - Legislative  
Environmental Analyst  
Nadine Spencer - Secretary

### PUBLIC MEMBERS

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

# MINUTES LOG

March 22, 2022  
State Capitol Building, Room 317 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 Hinebauch (R)  
Rep. Jedediah Hinkle (R)  
Sen. Tom Jacobson (D)  
Rep. Jim Keane (D)  
Rep. Marilyn Marler (D)  
Sen. Cary Smith (R)  
Sen. Mark Sweeney (D)  
Mike Freeman, Governor Designated Representative

### MEMBERS EXCUSED:

Rep. Steve Gunderson (R)  
Monica Tranel, Public Member

**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**

10:00:25 Sen. Mike Lang called the meeting to order at 10:00 AM. The committee secretary took roll.

**ADMINISTRATIVE MATTERS**

10:01:54 Joe Kolman, legislative environmental analyst, Legislative Services Division (LSD), said the Environmental Quality Council (EQC) is on budget for the interim. He provided information about the meeting agenda.

**WATER POLICY INTERIM COMMITTEE UPDATE**

10:02:45 Jason Mohr, research analyst, LSD, provided an update from the Water Policy Interim Committee (WPIC) meeting last week.

10:03:10 Mr. Mohr discussed HJ37 – study of selenium standards for Lake Koocanusa.

10:08:49 Mr. Mohr discussed final water right decrees and the future of water rights enforcement in Montana.

10:13:13 Mr. Mohr discussed SJ28 – study of Flathead River erosion.

10:14:27 Mr. Mohr discussed the ballot initiative review for a petition to designate portions of the Gallatin and the Madison rivers as outstanding resource waters (ORW).

**EQC questions and discussion**

10:16:20 Mr. Hamlett asked Mr. Mohr if the WPIC is discussing jurisdictional issues on water rights cases.

10:17:57 Mr. Hamlett asked Mr. Mohr if the petition to designate portions of the Gallatin and Madison rivers as ORW will change the designation of the streams as navigable or non-navigable.

10:18:35 Mr. Hamlett asked Mr. Mohr to provide information on how changing the ORW designation will affect the navigability clause.

10:19:32 Sen. Lang asked Mr. Mohr to provide the information at the next EQC meeting.

10:19:45 Rep Curdy said he is a member of the WPIC and thanked the conservation districts for raising awareness about the issue and providing examples of stream bank erosion around the state.

10:20:59 Sen. Lang asked Rep. Curdy about looking at erosion issues statewide and the impact from naturally occurring erosion.

10:23:45 Mr. Brenden commented on existing state regulations limiting boat speed near shorelines.

10:25:37 Sen. Lang asked about next steps for the HJ37 study.

10:26:19 Rep. Keane commented on recreational boating and erosion issues related to boat wakes versus high water and other causes.

10:27:37 Sen. Lang commented on naturally occurring erosion.

10:28:08 Rep. Keane commented on naturally occurring erosion and looking at areas in the state individually.  
10:28:51 Sen. Lang thanked Mr. Mohr.

### **HJ 27 CONSERVATION DISTRICT FUNDING**

10:29:57 Mr. Kolman provided an introduction.

### **Coal Severance tax study update, Megan Moore & Sam Schaefer**

10:30:59 Megan Moore, research analyst, LSD. ([Exhibit 1](#))  
10:38:07 Sam Schafer, Legislative Fiscal Division (LFD). ([Exhibit 2](#))

### **EQC questions and discussion**

10:45:50 Rep. Keane asked Mr. Schaefer about the different scenarios for adding additional severance taxes to the coal severance tax permanent fund and the effect of taking money out of the sub-trusts.  
10:46:57 Rep. Keane asked Mr. Schafer about the effect of taking money from the general fund.  
10:48:12 Rep. Keane asked Mr. Schafer to provide information on the amount of money that would be taken out of the general fund for each scenario.  
10:48:44 Rep. Keane asked Ms. Moore to provide a graph showing the decrease in funding that conservation districts have been receiving from different sources over the years and what will be projected as coal revenue goes down.  
10:49:31 Rep. Keane said coal revenue has been decreasing but new contracts for coal are significantly higher. He asked Ms. Moore to provide information on the increase in the amount that coal is selling for.  
10:50:34 Sen. Lang asked Ms. Moore to increase the font size for future charts.  
10:51:45 Sen. Flowers asked Mr. Schafer about plans for doing simulations on the effect on interest if a constitutional amendment was proposed that allowed slightly riskier investments to target four or five percent returns.  
10:53:38 Sen. Flowers asked Ms. Moore about the reason for the large decline in federal forestry receipts.  
10:54:26 Mr. Schafer provided additional information.  
10:55:02 Sen. Lang asked Mr. Schaefer about the Secure Rural Schools Act.  
10:55:28 Rep. Hinkle asked Ms. Moore if revenue generated from U.S. mineral royalties fluctuates depending on the administration in the executive branch.  
10:57:07 Mr. Schafer provided additional information.  
10:58:16 Mr. Brenden commented on the amount of time it takes to get a permit to drill on private land versus federal land.  
10:59:01 Mr. Hamlett asked Mr. Schafer about the impact on taxes when a coal company files for bankruptcy and continues to operate while it undergoes reorganization.  
11:00:45 Mr. Hamlett asked Mr. Schafer to provide data, for the last ten years, regarding taxes not paid or held because of business reorganization or bankruptcy. He also asked for information on companies that went out of business and the state did not receive any revenue.  
11:01:10 Mr. Hamlett asked Mr. Schafer about money generated from investments and the net effect the current inflation factor has on the coal trust.  
11:03:49 Sen. Lang commented on taxes currently being collected by the Department of Revenue (DOR). Mr. Schaefer said the DOR does its best to make sure individuals and companies are compliant with state tax laws.

11:05:14 Sen. Lang thanked Ms. Moore and Mr. Schaefer and said the Council looks forward to receiving the additional information requested.

#### **Options Overview – Mr. Kolman**

11:05:44 Mr. Kolman presented information on coal statistics and projections from the Office of Budget and Program Planning. [\(Exhibit 3\)](#)

11:06:31 Mr. Kolman presented information on options for conservation district funding. [\(Exhibit 4\)](#)

#### **Overview - Montana Association of Conservation Districts**

11:12:34 Rebecca Boslough, Montana Association of Conservation Districts (MDAC), said conservation district are in a funding crisis and are asking the EQC to help provide leadership and decision making. She said districts need stable, long-term funding sources to cover current district budget activities and to also increase baseline funding for district operation.

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

11:14:32 Sen. Flowers asked Mr. Kolman about the funding shortfall. [\(Exhibit 5\)](#)

11:16:51 Ms. Boslough provided additional information.

11:20:29 Sen. Sweeney entered the meeting.

11:21:15 Rep. Hinkle asked Ms. Boslough about data available on how budgetary needs changed once aquatic invasive species (AIS) boat check stations began operating.

11:22:25 Rep. Keane commented on the importance of finding a source of funding that is stable, constant, and will continue to grow.

11:24:21 Sen. Lang said when the AIS program began conservation districts were able to step up and work with FWP to get funding for eastern Montana.

11:25:07 Mr. Brenden commented on the importance of conservation districts and said he agrees that the tax on marijuana will provide a stable source of funding.

11:27:09 Sen. Flowers said a one-cent tax on water bottles could also provide a stable source of funding. He asked Sen. Lang how the Council will work through the funding options and arrive at a recommendation for a committee bill.

11:28:52 Rep. Marler said she is in favor of the tax on water bottles and asked what Council members thought about the options. She said she was concerned about adding another item to the marijuana tax.

11:30:08 Sen. Lang said he hopes the Council can find an option that the 2023 Legislature can agree on.

11:30:52 Sen. Lang asked Mr. Kolman to provide information on the cost to implement the tax on water bottles.

11:31:16 Rep. Hinkle said he is not in favor of using the marijuana tax or creating new taxes or fee increases. He recommended using gambling funds or lottery proceeds. He asked about combining conservation districts and employees.

11:32:20 Sen. Lang commented on using money from tourism and the hotel tax.

11:33:06 Rep. Keane said the choice is to find funding now or to let the program go.

11:33:55 Sen. Lang said he recommends moving forward on a united plan for funding.

11:34:31 Rep. Hinkle asked Mr. Kolman if each of the three scenarios for funding presented by Mr. Schafer will potentially cover the conservation districts shortfall.

11:37:10 Mr. Hamlett said the Council is tasked with forming a legislative solution. He commented on using the marijuana tax and said it is new money that was intended to be used for conservation. He recommended putting a portion of the money into reserve for emergencies.

11:39:54 Sen. Flowers said using the tax on marijuana may be the best solution, but a lot of other options were presented by staff. He commented on the suggestion to form a subcommittee to consider all the options and come up with a tiered package of solutions. He said he agrees there needs to be unanimous support by the Council on a proposal to take to the legislature.

11:41:27 Sen. Lang said he is concerned about taking more than one option to the legislature. Sen. Flowers said it might be useful to have other options available.

11:42:15 Sen. Lang said part of the money in the marijuana bill was for conservation and needs to be identified.

11:42:55 Mr. Brenden said it will be difficult to raise taxes during the next biennium.

11:43:38 Rep. Keane commented on raising taxes.

#### **Public comment**

11:44:02 Jim Simpson, past president, MDAC.

11:50:05 Sen. Lang asked Mr. Simpson about the real estate tax and if a large conservation easement can contribute to a conservation trust fund.

11:51:42 Sen. Lang commented on working with conservation resources in eastern Montana on sage grouse.

11:52:30 Mark Bostrom, administrator, Conservation Resource Development Division, Department of Natural Resources and Conservation (DNRC)

11:53:26 Sen. Lang said the Council can discuss next steps after lunch.

11:53:41 Ms. Boslough provided closing comments.

11:55:57 Sen. Lang said he will discuss the different funding options with Sen. Flowers during lunch and encouraged other Council members to also discuss the different options. He said the land banking report will be presented after lunch.

11:56:39 Recess for lunch

13:04:16 Reconvene

#### **LAND BANKING REPORT (77-2-366, MCA)**

13:04:36 Shawn Thomas, Trust Lands Management Division administrator, DNRC, introduced Ryan Weiss, Real Estate Management Bureau chief.

13:05:25 Mr. Weiss provided a summary of the biennial land banking report. ([Exhibit 6](#))

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

13:08:58 Sen. Lang asked Mr. Weiss about the maximum amount of state land that can be sold.

13:09:42 Mr. Brenden commented on keeping land prices realistic for the people of Montana and not inflating prices for people from out-of-state.

13:10:17 Rep. Keane asked Mr. Weiss if the department is on target for cabin site sales this year.

13:10:35 Sen. Jacobson entered the meeting.

13:11:09 Rep. Keane asked Mr. Weiss about the number of cabin sites remaining.

13:11:27 Rep. Keane asked Mr. Weiss if there was more interest in purchasing cabin sites before land prices increased.

13:12:14 Sen. Lang asked Mr. Weiss if the cabins are located on state land.

13:12:19 Sen. Lang asked Mr. Weiss about the current value of the land banking account.

13:12:41 Sen. Lang asked Mr. Weiss about the cost for the DNRC to administer the program.

13:13:15 Rep. Curdy asked Mr. Weiss about the number of cabin sites sold to an individual lessee and the number of cabin sites sold where the individual lessee could not compete with the selling price.

13:14:29 Rep. Curdy asked Mr. Weiss about the number of people who were unable to purchase their cabin site because of inflated prices.

13:15:35 Rep. Curdy asked Mr. Weiss about the percentage of people who have opted out of selling cabin sites.

13:16:13 Mr. Hamlett asked Mr. Weiss about the difference in the number of acres acquired by the DNRC and the number of acres sold.

13:16:57 Mr. Hamlett asked Mr. Weiss if the DNRC must acquire another piece of property zoned the same way as the land sold.

13:17:52 Rep. Keane asked Mr. Weiss about the sales by trust for Montana Tech and about the sales price versus annual income.

#### **Public comment**

None

13:19:39 Mr. Thomas said a detailed report on cabin site sales is available on the DNRC website. He provided additional detail regarding Sen. Keane's question about sales by trust and the difference in revenue between Montana State University and Montana Tech.

#### **STATE LAND ROAD CLOSURES REPORT, (77-1-280, MCA)**

13:20:38 Mr. Thomas said Deidra Klobberdanz oversees the land banking and cabin site sales program and Jessica Hoag works on public access and recreational use issues for the division.

13:21:39 Mr. Thomas said SB326 (2015) requires the DNRC to report to the EQC information associated with recreational use on state trust lands. [\(Exhibit 7\)](#)

#### **Public comment**

None

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

13:27:19 Mr. Galt asked Mr. Thomas about working with federal agencies on road closures on federal land.

13:29:11 Sen. Lang said the Bureau of Land Management (BLM) will be providing a presentation during the EQC meeting tomorrow and asked Mr. Thomas if the department has any questions about integrating from BLM land to state land.

13:30:10 Sen. Lang asked Mr. Thomas about the entity responsible for paying for road maintenance on state land.

13:31:01 Mr. Hamlett asked Mr. Thomas when Montana acquired title to most of the state lands.

13:31:57 Mr. Hamlett asked Mr. Thomas how access was lost to state property.

13:32:26 Mr. Hamlett asked Mr. Thomas about isolation that came during homesteading and traditional ways people got into and out of their property.

13:33:37 Mr. Brenden commented on state land and access issues.

13:34:24 Rep. Fielder asked Mr. Thomas if the DNRC considers the American with Disability Act (ADA) requirements when considering road closures.

13:36:10 Rep. Fielder commented on the effect that travel management plans have on the local economy.

13:37:21 Mr. Hamlett asked Mr. Thomas about access to isolated pieces of state land.

**Public comment**

None

**MOUNTAIN SHEEP REPORT, (87-2-702, MCA)**

13:39:52 Quentin Kujala, chief of staff, Department of Fish, Wildlife, and Parks (FWP).

**Public comment**

None

**EQC questions and discussion**

13:44:16 Rep. Fielder asked Mr. Kujala if there have been any mortalities in transplanted sheep.

13:45:02 Rep. Curdy asked Mr. Kujala about the removal of three mountain lions from Wild Horse Island and how long it will take FWP to get the population back to where it can start transplanting sheep again.

13:46:30 Rep. Hinkle asked Mr. Kujala if there have been any concerns or discussion about genetic diversity within a population.

13:48:24 Rep. Hinkle asked Mr. Kujala if FWP is actively looking for areas to introduce sheep.

13:50:53 Rep. Hinkle asked Mr. Kujala about an established sheep population in the Crazy Mountains.

13:51:57 Sen. Lang asked Mr. Kujala where the Tendoy Mountains are located.

13:52:19 Rep. Marler asked Mr. Kujala about disease transmission.

**Public comment**

None

**CONTRACTUAL PUBLIC ELK HUNTING ACCESS AGREEMENTS**

13:56:00 Hank Worsech, director, FWP, discussed HB454 (2001) agreements.  
(Exhibit 8)

**Questions/discussion**

14:01:37 Rep. Marler asked Mr. Worsech about the changes in the 454 program.

14:04:52 Rep. Marler asked Mr. Worsech about the reason for the increased participation in the program.

14:06:17 Rep. Marler asked Mr. Worsech about closing the loophole that gives landowners antler tags and not public hunters, and about public scrutiny.

14:09:41 Rep. Marler commented on giving antler tags and permits to landowners.



14:10:20 Mr. Brenden said he believes the program is a step in the right direction for managing elk herd populations and is a great opportunity for sportsmen and landowners.

14:14:38 Sen. Flowers asked Mr. Worsech about the number of landowners receiving 454 permits who were represented by the same individual that represented outfitters and guides during the legislative session, why that occurred, and if there was an advantage given.

14:16:55 Sen. Flowers asked Mr. Worsech about the person at FWP responsible for making assessments on the number of elk hunting days, necessary for the proper management of elk on a landowner's property, while agreements were being negotiated.

14:19:17 Sen. Flowers asked Mr. Worsech about issuing permits after quotas were set and allocating over the number that biologists recommended. He asked how it is consistent with the law.

14:21:28 Sen. Flowers asked Mr. Worsech how to better synchronize 454 bull permits with decisions made during the season setting process in the future.

14:22:59 Sen. Flowers asked Mr. Worsech if the recommendation to go from allocating four public hunters for one landowner permit, to three public hunters for one landowner permit, came from the Private Land/Public Wildlife Council (PLPW).

14:23:39 Sen. Jacobson asked Mr. Worsech if there is a limit to the number of 3:1 or 4:1 permits a single landowner can have.

14:24:29 Sen. Jacobson asked Mr. Worsech if a landowner with a bull permit can give the permit to someone in exchange for money to access his land.

14:24:58 Sen. Jacobson asked Mr. Worsech how landowners are compensated for licenses.

14:27:26 Sen. Lang asked Mr. Worsech about designating a license for a limited liability company or limited liability partnership.

14:27:58 Rep. Curdy asked Mr. Worsech the reason why FWP biologists were not interested in the 454 program.

14:28:41 Rep. Curdy asked Mr. Worsech if the lack of interest in the program was localized or statewide.

14:29:05 Rep. Curdy asked Mr. Worsech why the department did not indicate that the FWP biologists did not think it was the right thing during the legislative committee hearings.

14:30:38 Rep. Marler asked Mr. Worsech about the reason why biologists did not like the 454 program.

14:31:32 Sen. Lang thanked FWP for its work in Phillips County.

14:32:30 Mr. Worsech commented on elk management.

14:33:07 Sen. Hinebauch thanked Mr. Worsech for looking at different ways to manage wildlife and elk and to improve the landowner and hunter relationships.

14:34:40 Mr. Worsech said Montana State Parks just signed a memorandum of understanding with the Little Shell Chippewa Tribe turning over management of Hell Creek State Park.

14:35:06 Rep. Curdy asked Mr. Worsech where the members of the Elk Management Citizen Advisory Group are from.

14:36:46 Sen. Lang asked Mr. Worsech to have someone provide the information to staff.

14:37:09 Sen. Flowers commented on the importance of the relationship between sportsmen and landowners in elk management.

14:38:49 Mr. Worsech said his goal is to have different groups of people working together to come up with solutions.



14:39:23 Sen. Lang asked Mr. Worsech about additional landowner permits for hunting districts that are over objective.

**Public comment**

14:40:57 Ed Beall, Helena, chairman, PLPW Council  
14:48:27 John Salazar, Livingston, Montana Citizens' Elk Management Coalition (MCEME) ([Exhibit 9](#))  
14:53:45 Rep. Hinkle asked Mr. Salazar about the MCEME and its membership.  
14:56:33 Sen. Sweeney asked Mr. Salazar about the problem.  
14:57:40 Sen. Lang thanked Mr. Salazar.  
  
14:58:12 Cole Hoefle, Billings  
15:04:18 Hannah Downey, policy director, Property and Environment Research Center (PERC) ([Exhibit 10](#))  
15:06:58 Thomas Baumeister, volunteer vice-chair, Montana Chapter of Backcountry Hunters and Anglers  
15:10:14 Marcus Strange, Montana Wildlife Federation  
15:12:35 Rod Bullis, citizen  
15:15:04 Paul Ellis, citizen, current member PLPW  
15:19:00 Mark Taylor, citizen ([Exhibit 11](#))  
15:27:19 Joe Schnechel, private landowner  
  
15:29:14 Mr. Worsech provided information about the members of the Elk Management Citizen Advisory Group and where they are from.  
  
Public comment received online ([Exhibit 12](#))  
  
15:30:17 Recess  
15:40:56 Reconvene

**ORPHAN SHARE REPORT, (75-10-743(14))**

15:41:17 Jenny Chambers, Waste Management and Remediation Division administrator, Department of Environmental Quality (DEQ). ([Exhibit 13](#))

**EQC questions and discussion**

15:45:36 Rep. Keane asked Ms. Chambers about the orphan share program.

**Public comment**

None

**SUBDIVISION REVIEW UPDATE**

15:47:17 Amy Steinmetz, Water Quality Division administrator, DEQ.

**EQC questions and discussion**

15:55:46 Rep. Curdy asked Ms. Steinmetz if DEQ is involved with the group of county planners and their efforts to work on subdivision review and zoning changes.  
15:56:46 Rep. Curdy asked Ms. Steinmetz about staffing issues.

15:59:28 Rep. Curdy asked Ms. Steinmetz about the impact that the cost of housing has on hiring employees.

16:00:42 Sen. Flowers asked Ms. Steinmetz about doing a survey in another one or two years to get feedback on the review process and find out what is working and what is not.

16:02:00 Mr. Hamlett asked Ms. Steinmetz about subdivision trends and whether there are more exempt wells, community water systems, or systems connected to city water.

16:02:59 Rep. Keane asked Ms. Steinmetz about gravel pits proposed or operating near subdivisions in Gallatin County. Ms. Steinmetz redirected the question to Chris Dorrington, director, DEQ.

**LIBBY ASBESTOS SUPERFUND OVERSIGHT COMMITTEE REPORT (75-10-1601, MCA)**

16:04:12 Mr. Dorrington.

**EQC questions and discussion**

None

**Public comment**

None

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

16:09:31 KC York, Trap Free Montana ([Exhibit 14](#))

16:12:13 Sen. Lang said the Council can decide at its meeting tomorrow about next steps for conservation district funding.

**RECESS**

16:12:42 Sen. Lang recessed the meeting at 4:12 p.m.