



## ENVIRONMENTAL QUALITY COUNCIL 67th Montana Legislature

### SENATE MEMBERS

Pat Flowers  
Steve Hinebaugh  
Tom Jacobson  
Mike Lang  
Ryan Lynch  
Cary Smith

### 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

May 25, 2022

State Capitol Building, Room 317 and Zoom  
Helena, Montana

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### MEMBERS PRESENT:

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

### MEMBERS EXCUSED:

Sen. Ryan Lynch (D)  
Sen. Cary Smith (R)

**STAFF PRESENT:**

Joe Carroll, Attorney

Joe Kolman, Legislative Environmental Analyst

Fong Hom, Secretary

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

08:01:44 Sen. Mike Lang called the meeting to order at 8:01 AM. The committee secretary took roll. [\(Attachment 3\)](#)

**RULE REVIEW**

08:04:18 Joe Carroll, staff attorney, Legislative Services Division (LSD). [\(Exhibit 1\)](#)

**Public comment**

None

**EQC questions and discussion**

08:06:44 Sen. Lang asked Mr. Carroll about the Department of Environmental Quality's (DEQ) rule Notice No. 17-418 and 17-419.

08:07:37 Rep. Fielder asked Mr. Carroll about the state maintaining primacy over air quality regulations versus federal regulations. Mr. Carroll redirected the question to Joe Kolman, legislative environmental analyst, LSD.

08:09:09 Sonja Nowakowski, administrator, Air, Energy, and Mining Division, DEQ, provided additional information.

08:10:04 Sen. Lang commented on discussions regarding the health effects of particulates from forest fires.

08:10:40 Sen. Flowers asked Quentin Kujala, chief of staff, Department of Fish, Wildlife, and Parks (FWP) about amending the grizzly bear management rule.

08:13:17 Sen. Lang asked Mr. Kujala about MAR Notice No. 12-555 and the exceptions on the Boulder River.

08:14:02 Rep. Fielder asked Mr. Kujala about the mortality parameters in the grizzly bear management rule.

08:17:55 Rep. Fielder asked Mr. Kujala if invasive mussels have been found in Tiber Reservoir.

08:18:37 Rep. Curdy asked Mr. Kujala about ending mandatory inspections at Tiber Reservoir and funding that could be available for the aquatic invasive species (AIS) program.

**OVERVIEW OF ADVISORY COUNCILS**

08:20:03 Mr. Kolman. [\(Exhibit 2\)](#)

**EQC questions and discussion**

08:23:46 Mr. Brenden commented on the number of advisory council members.

08:24:19 Sen. Lang commented on the ability for the Environmental Quality Council (EQC) to provide input.

08:24:37 Sen. Flowers asked Sen. Lang if the advisory council members are voluntary positions.

08:25:06 Sen. Flowers asked Sen. Lang if costs are related to the work it takes to consider and make the appointments versus increasing the size of the state's work force.

08:26:07 Sen. Flowers said it is hard making an informed decision without knowing if the councils are effective.

08:26:39 Mr. Kolman said if the EQC would like to receive more information about an advisory council a full review can be requested at the July meeting.

08:27:27 Rep. Keane provided information about the purpose for the advisory councils.

08:29:09 Rep. Marler said advisory councils are important and a way to get structure and collaborative feedback from citizens. She said it is possible that some of the councils have completed their work.

08:30:34 Mr. Kolman commented on the length of time since some of the councils have met.

08:31:07 Sen. Flowers said he would like to get the department's perspective on whether the councils are needed and why they haven't met regularly.

08:31:39 Sen. Lang said the EQC has the responsibility to look at the councils and request that agencies provide more information.

08:32:05 Sen. Jacobson said he recommends looking at the councils to determine if they are still relevant and effective.

08:34:00 Rep. Hinkle said he also recommends looking at the need for the councils.

08:34:25 Rep. Gunderson said some of the councils may be a duplication of effort and could be combined. Sen. Lang agreed.

08:35:07 Mr. Hamlett said he was a member of EQC when it reviewed the councils. He said the councils serve a purpose and provide good information and advice.

08:36:44 Steve Hinebauch commented on the number of councils.

#### **Public comment**

08:37:23 Trent Kleppen, chair, Upland Game Bird Citizens' Advisory Council.

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

08:38:27 Sen. Lang said the EQC may take a field trip to see the pheasant program at the Montana State Prison and could invite the Upland Game Bird Citizens' Advisory Council. He asked Mr. Kolman about its report.

08:39:00 Mr. Kolman said the councils are statutory advisory councils and are different from the other councils mentioned. Sen. Flowers requested additional information about the Wetlands Protection Advisory Council and the Boating Advisory Council at the July meeting. He asked about requests to hear about other councils. Mr. Kolman said no action is needed to retain the councils. He said the EQC can request that agencies and council members provide additional information and if the EQC wants to eliminate an advisory council it will require a committee bill.

08:40:17 Sen. Lang asked Sen. Flowers about having the councils present at the next meeting versus sending a letter.

08:41:17 Sen. Flowers said if an advisory council has not met it raises the question if they are still relevant. He said he would like to find out why they haven't met and if they are still needed.

08:41:56 Sen. Lang asked Mr. Kolman if there are other statutory advisory councils under the purview of the EQC.

08:42:49 Rep. Keane said he recommends having the agencies provide information on whether the councils are working or not.

08:43:27 Rep. Gunderson said he agreed and recommended getting a synopsis on each council.

08:44:12 Mr. Kolman said the EQC received a summary of each advisory council. He said if Council members want the agencies to provide information on whether the councils are still relevant, they can present at the meeting in July.

08:45:02 Sen. Lang said he recommends that the EQC members review the information provided by staff before deciding what to do.

08:45:25 Rep. Marler asked Mr. Kolman if the list is a complete list of the advisory councils.

08:46:36 Rep. Marler said she recommends that EQC members review the information provided. She said a series of reports was not necessary.

08:46:56 Mr. Hamlett commented on the advisory councils.

08:47:36 Sen. Lang said he recommends that EQC members review the statute. Mr. Kolman said if EQC members want to review an advisory council they need to make the request at this meeting so it can be put on the agenda for July.

08:48:26 Mr. Brendan said he recommends that EQC members look at the information provided by Mr. Kolman and if they have any concerns it can be discussed in July.

08:49:09 Sen. Flowers withdrew his request for information about the two advisory councils and said he will review the information and make a motion at the next meeting if he feels that an advisory council is not relevant.

08:49:36 Sen. Lang requested EQC members review the information provided by staff and whether they would like further information in July.

#### **WATER POLICY INTERIM COMMITTEE UPDATE**

08:49:43 Jason Mohr, research analyst, LSD.

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

09:03:45 Rep. Keane asked Mr. Mohr about the letter the WPIC sent to the American Rescue Plan Act (ARPA) Infrastructure Advisory Committee requesting federal funds to fix lead in school water and if they discussed the amount of money needed.

09:04:59 Rep. Curdy said several schools did not turn in their test results and that is why an amount was not requested. He said the Office of Public Instruction (OPI) was at the meeting and several sources of funding were discussed.

09:07:03 Sen. Lang asked Mr. Mohr about the lake elevation required for the test flows at Fort Peck Reservoir.

09:07:40 Mr. Hamlett asked Mr. Mohr about the specific source of contamination for the lead in school water systems.

09:09:13 Sen. Flowers asked Mr. Mohr about the EPA letter regarding SB358.

09:12:59 Rep. Curdy asked Mr. Mohr about the EPA's concerns regarding SB358.

09:13:42 Mr. Galt commented on the narrative nutrient standard process.

09:14:53 Mr. Hamlett commented on the waters of the United States.

## **DNRC WATER UPDATES**

09:17:11 Anna Pakenham Stevenson, Water Resources Division administrator, DNRC, provided information on the comprehensive water review of water administration and management. ([Exhibit 3](#))

## **Public comment**

None

## **EQC questions and discussion**

09:35:36 Rep. Keane asked Ms. Pakenham Stevenson about the response time for information requests received by phone.

09:37:25 Rep. Marler asked Ms. Pakenham Stevenson about the decision for not leasing water for instream flows for fish conservation. Ms. Pakenham Stevenson redirected the question to Mr. Kujala.

09:41:16 Bill Schenk, manager, Land and Water Program, FWP, provided additional information.

09:44:55 Mr. Freeman asked Mr. Schenk about making calls on water rights.

09:46:31 Sen. Flowers said he hopes that when FWP works with local watershed groups it does not lose sight of FWP's fundamental responsibility and mission to be stewards of the state's fish and wildlife. He asked Mr. Schenk to provide a written copy of the process for how and when making calls on junior water rights is finalized.

09:47:57 Rep. Curdy asked Ms. Pakenham Stevenson how the DNRC will work with watershed and other groups to best utilize Montana's water.

09:53:16 Rep. Curdy asked Ms. Pakenham Stevenson about establishing a stakeholder advisory committee and if the department is looking at making a legislative request or if it will be done through the department's rule making process.

09:55:14 Mr. Hamlett asked Mr. Kujala about an article in the Great Falls Tribune regarding instream flows on the Smith River and concern about abandonment of the state's water right.

09:58:18 Mr. Hamlett asked Ms. Pakenham Stevenson about the enforcement of water rights in Montana.

10:02:16 Mr. Hamlett commented on calling water and junior water rights.

10:03:15 Rep. Marler commented on the importance of local control on water use decisions. She also commented on the importance of healthy wild fish.

10:05:03 Sen. Lang commented on maintaining the respect that agriculture has regarding water rights.

10:05:34 Recess

10:28:12 Reconvene

## **FIRE SEASON & WATER SUPPLY UPDATE**

### **Sonya Germann, Forestry Division Administrator, DNRC**

10:28:33 Ms. Germann provided information on the fire season, fire suppression, and preparedness.

**Arin J. Peters, Hydrologist, NOAA National Weather Service**

10:39:28 Mr. Peters provided information on the drought and water supply outlook.  
(Exhibit 4)

**Magdalena Hultstrand, USDA - NRCS, Hydrologist, Montana Snow Survey Program**

10:59:01 Ms. Hultstrand provided information on the snow survey and water supply forecasting program. (Exhibit 5)

**Public comment**

None

**EQC questions and discussion**

11:23:01 Rep. Hinkle asked Ms. Germann about the guidelines for the rotation of state incident management teams.

11:31:03 Rep. Gunderson commented on the ability to read the slides on the screen.

**FEDERAL MANAGEMENT AND STATE COORDINATION**

**Ryan Newman, Montana Area Manager, Bureau of Reclamation**

11:32:28 Mr. Newman. (Exhibit 6)

**Anna Miller, Deputy Administrator, Conservation and Resource Development Division, DNRC**

11:54:59 Ms. Miller. (Exhibit 7)

**Paul Azevedo, Water Management Bureau Chief, DNRC**

12:02:52 Mr. Azevedo.

**Bill Schenk, Lands Program Manager, FWP**

12:09:25 Mr. Schenk.

**Public comment**

12:18:33 Clayton Elliott, Montana Trout Unlimited.

**EQC questions and discussion**

12:23:10 Mr. Brendon provided information on the Dry Prairie Regional Water System.

12:24:41 Rep. Curdy asked Mr. Elliot about the loss of stream gauges.

12:27:05 Rep. Curdy redirected the question to Mr. Azevedo.

12:30:37 Sen. Jacobsen asked Mr. Newman and Mr. Schenk about the status of the fish cleaning stations at Tiber and Canyon Ferry reservoirs.

12:31:54 Mr. Newman.

12:32:56 Director Hank Worsech, FWP, provided additional information.

12:34:18 Rep. Keane commented on the lake level at Canyon Ferry Reservoir and asked Mr. Newman about working with the other partners.

12:38:54 Rep. Keane asked Mr. Newman about money available in the future and becoming a better partner in the process.

12:39:49 Rep. Keane asked Mr. Newman about the process to propose projects.

12:40:59 Sen. Lang thanked the presenters and commented on state and federal agencies working together toward a common goal. He also thanked stakeholders for their work on the St. Mary's project.

12:42:04 Sen. Lang commented on the project in Havre on the safety of dams.

12:42:56 Sen. Lang asked Mr. Newman about the status of the ability to pay study.

12:46:56 Sen. Lang commented on the ability to pay study and the St. Mary's project.

## **AGENCY UPDATES FROM DIRECTORS**

### **Department of Environmental Quality**

12:48:39 Director Chris Dorrington.

### **EQC questions and discussion**

13:01:26 Sen. Flowers asked Mr. Dorrington to provide an overview of the open cut mining program and how HB599 (2021) is affecting implementation.

13:03:24 Rep. Curdy asked Mr. Dorrington about subdivision reviews and why the administration isn't putting together an all-hands-on deck response to the housing crisis.

13:06:32 Rep. Keane asked Mr. Dorrington about a separate budget for funding litigation.

13:08:24 Mr. Hamlett asked Mr. Dorrington if he has talked to the attorney general about issues regarding lawsuits and if there is anything their office can do.

13:09:51 Mr. Hamlett asked Mr. Dorrington if there is a trend regarding litigation to stop development once it has been approved.

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

13:11:30 Director Hank Warsech.

### **EQC questions and discussion**

13:17:18 Rep. Fielder asked Mr. Warsech about the lynx protective zone settlement agreement and the adjustments allowed.

13:19:54 Rep. Fielder asked Mr. Warsech about the ability to apply for an antlerless elk permit using a paper application.

13:22:31 Rep. Marler said members of the Private Lands/Public Wildlife Council (PLPW) don't understand the block management program and asked Mr. Warsech about providing information about the program at the next meeting.

13:25:40 Rep. Curdy thanked the department for stepping back on the kokanee salmon situation at Georgetown Lake. He asked Mr. Warsech about concern regarding the lack of transparency regarding the recent lawsuit on elk management and the department's approach to the lawsuit.

13:29:40 Sen. Lang provided his observations.

13:30:31 Sen. Jacobsen asked Mr. Warsech about the department's reorganization of the Parks Division and if there is a plan or approval by the U.S. Fish and Wildlife Service for the reorganization.

13:32:13 Mr. Warsech commented on the department's goal to provide more press releases regarding its activities.

13:33:04 Sen. Flowers asked Mr. Warsech to provide information about the Habitat for Montana program.

13:35:00 Sen. Flowers asked Mr. Worsech about HJ33 (2021) and if the citizens advisory committee has met and is working on a report to the EQC.

13:36:48 Sen. Flowers asked Mr. Worsech about the database compiled on inadvertent trapping of dogs and if it is related only to the species that are regulated by FWP. Mr. Worsech redirected the questions to Mr. Kujala.

13:40:25 Sen. Flowers asked Mr. Worsech about the elk management lawsuit and if the department can make assurances that before a settlement is reached it will describe the settlement publicly.

13:42:25 Rep. Marler said she received information from Mr. Kujala regarding incidental trapping data and recommended including it on the next EQC agenda.

13:43:43 Mr. Brendan commented on elk management.

13:46:46 Sen. Flowers asked Mr. Worsech about an update on avian flu.

13:48:28 Sen. Lang commented on avian flu.

13:49:20 Mr. Hamlett asked Mr. Worsech about the current number of ongoing conservation easements the department has with landowners.

13:50:03 Mr. Hamlett asked Mr. Worsech to provide information about the Chip Creek conservation easement.

13:53:38 Mr. Hamlett commented on how elections can change momentum.

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

13:55:14 Kerry Davant, deputy director, DNRC.

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

None

#### **Public comment**

None

#### **OTHER BUSINESS**

#### **Next Steps for HJ27 Conservation District Study**

14:11:51 Sen. Lang said the EQC discussed next steps for the study yesterday.

#### **Agenda Items for July Meeting**

14:11:59 Mr. Kolman provided a summary of the July agenda items.

14:13:02 Sen. Lang asked Sen. Flowers about including the Upland Game Bird Citizens' Advisory Council on the field trip to the state prison.

14:13:50 Rep. Curdy said he recommends including a discussion with the EPA about the Smurfit Stone plant.

14:15:16 Sen. Lang thanked Mr. Kolman for including federal agencies at the meeting.

14:15:40 Mr. Brenden said he talked to Mr. Dorrington about contacting people in Washington and Oregon about septic systems that are used around water and having them present information at the fall EQC meeting.

14:17:13 Mr. Hamlett commented on the Smurfit Stone facility. He asked Mr. Carroll to investigate the legality of conservation easements. Mr. Brenden agreed.

14:20:37 Mr. Hamlett said he recommends inviting stakeholders and having a discussion regarding grizzly bears in Montana and potential delisting.



14:22:19 Rep. Keane asked Mr. Kolman about the potential for prescribed burns this year. He said he recommends getting an update on the water supply and fire update in July.

14:24:03 Rep. Fielder asked Mr. Kolman if the ban on prescribed burns applies to the entire state.

14:24:31 Rep. Marler asked about the dates for the July meeting. Mr. Kolman said the meeting is scheduled for July 14-15. Sen. Lang commented on the field trip.

14:25:12 Rep. Marler said she recommends getting information from the Local Government Interim Committee on work they have done on alternative septic system technology.

14:25:56 Mr. Brenden asked Mr. Kolman about the July meeting date.

14:26:29 Rep. Fielder said July 14-15 is the Republican party convention. Mr. Kolman said he will work with the chair and the vice chair on the July meeting date.

14:28:47 Rep. Gunderson said he would like to look at split estates when there is a different surface owner and mineral right owner for conservation easements.

14:29:25 Rep. Curdy commented on the date for the July WPIC meeting and potential EQC meeting dates.

14:30:28 Mr. Hamlett commented on split estate surface and mineral rights. He said he would like information on initial attack on wildfire and what a volunteer fire department can or cannot do.

14:31:47 Sen. Flower asked about following up with FWP on the number of conservation easements.

14:32:52 Mr. Brenden commented on initial attack by private landowners.

14:33:30 Rep. Curdy commented on initial attack fire plans by federal and state agencies.

14:34:28 Sen. Keane commented on funding for fire tenders in eastern Montana.

14:35:23 Sen. Lang thanked the Council and staff.

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

14:35:50 Rod Bullis.

14:36:35 Clayton Elliot, Montana Trout Unlimited.

**ADJOURNMENT**

14:39:05 Sen. Lang adjourned the meeting at 2:39 p.m.