



## **SPECIAL COMMITTEE ON HJ37**

### **67th Montana Legislature**

#### **SENATE MEMBERS**

Jill Cohenour  
Walt Sales  
Cary Smith  
Mark Sweeney

#### **HOUSE MEMBERS**

Willis Curdy  
Steve Gunderson  
Rhonda Knudsen  
Marilyn Marler

#### **COMMITTEE STAFF**

Corina Hach -  
Jason Mohr - Research Analyst  
Nadine Spencer - Secretary

# **MINUTES LOG**

## **Special Committee on HJ37**

January 27, 2022  
State Capitol Building Room 172 and Zoom  
Helena, Montana

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#### **MEMBERS PRESENT:**

Sen. Walt Sales, Presiding Officer (R)  
Sen. Jill Cohenour (D)  
Rep. Willis Curdy (D)  
Rep. Steve Gunderson (R)  
Rep. Rhonda Knudsen (R)  
Rep. Marilyn Marler (D)  
Sen. Cary Smith (R)  
Sen. Mark Sweeney (D)

#### **STAFF PRESENT:**

Jason Mohr, Research Analyst  
Nadine Spencer, Secretary

## **AGENDA ([Attachment 1](#))**

## **VISITORS' LIST ([Attachment 2](#))**

### **CALL TO ORDER/ROLL CALL**

08:31:19 Sen. Walt Sales called the meeting to order at 8:31 AM. The committee secretary took roll.

### **MEETING OVERVIEW**

08:33:14 Jason Mohr, research analyst, Legislative Services Division (LSD), provided an overview and said the committee received a memo in 2020 from Cori Hach, staff attorney, outlining the rule proposal by the Board of Environmental Review. ([Exhibit 1](#))

08:34:09 Mr. Mohr said the Board proposed the rule to adopt site specific selenium standards for Lake Koocanusa and a portion of the Kootenai River. He said the Board adopted the rule and it was approved by the EPA. ([Exhibit 2](#)) He said the purpose of the special committee is to make recommendations on improvements to the rule and provide its comments to the Water Policy Interim Committee (WPIC).

08:36:16 Mr. Mohr said the Department of Environmental Quality (DEQ) will present its data and processes done in the fall of 2020. ([Exhibit 3](#))

08:36:38 Mr. Mohr said the committee will have a discussion on proposed work plans from the DEQ and Teck Resources. ([Exhibit 4](#)) ([Exhibit 5](#))

08:37:05 Mr. Mohr said the Board will provide information regarding a stringency review on a subsection of the rule. ([Exhibit 6](#)) He said a public hearing on that is scheduled for Monday.

### **REVIEW OF DATA AND PROCESSES USED IN ADOPTION OF ARM 17.30.632**

08:38:29 Chris Dorrington, director, DEQ, provided an introduction and review.

08:41:22 Mr. Dorrington introduced the DEQ staff.

### **REVIEW OF DATA AND PROCESSES USED IN ADOPTION OF ARM 17.30.632**

08:43:16 Myla Kelly, Water Quality Standards and Modeling Section supervisor, DEQ, presented an overview of the procedural and technical process that went into the establishment of the water quality selenium standards. ([Exhibit 7](#))

08:49:17 Lauren Sullivan, water quality science specialist, DEQ, continued the presentation.

09:04:38 Ms. Kelly discussed the rule making process.

09:10:47 Sen. Sales thanked the DEQ.

### **Committee discussion**

09:12:02 Sen. Cohenour commented on the science used to determine the numbers. She asked Ms. Kelly about the nature of the effects of selenium.

09:13:10 Ms. Sullivan provided additional information.

09:14:09 Sen. Cohenour asked Ms. Kelly if action by the EPA to approve the standard, based on the information, data, and model submitted by the DEQ, will make the site-specific standard the federal standard.

09:16:11 Rep. Gunderson asked Ms. Kelly how DEQ handles instances of high selenium levels within the state of Montana.

09:17:29 Rep. Gunderson asked Ms. Kelly to provide information on each instance where selenium has been found and recorded in Montana and how the level of each site compares to Lake Koocanusa and the Kootenai River.

09:18:13 Rep. Gunderson asked Ms. Sullivan about including the data from Teck's water treatment operations in the model.

09:20:21 Rep. Gunderson asked Ms. Sullivan about concern regarding the levels of selenium upstream that could eventually end up in Montana.

09:21:49 Rep. Gunderson asked Ms. Sullivan if the data from Teck will change DEQ's data.

09:24:08 Mr. Dorrington provided additional information.

09:25:43 Rep. Gunderson asked Mr. Dorrington about defining the reservoir water as "still" water.

09:27:34 Rep. Gunderson asked Ms. Kelly about defects found in fish in the Elk and Fording rivers.

09:28:50 Ms. Kelly provided information on treatment technology.

09:29:45 Ms. Kelly answered Rep. Gunderson's question regarding defects found in fish.

09:30:35 Sen. Cohenour said the reason for setting the selenium standard is the effect on the reproduction of fish. She asked Ms. Kelly about the lack of deformities found in fish now.

09:32:58 Sen. Sales asked Ms. Kelly about the sample taken in 2020 that showed the highest concentration of selenium and if it was in fish tissue.

09:34:03 Sen. Sales asked Ms. Kelly about the working group.

09:35:25 Sen. Sales asked Ms. Kelly if the public website is currently active and updated with new information.

09:35:53 Sen. Sales asked Ms. Kelly to explain 304(a) criteria.

09:37:08 Rep. Curdy asked Ms. Kelly if the Department of Fish, Wildlife, and Parks (FWP) has set a consumption limit on fish from Lake Koocanusa. Ms. Kelly redirected the question to Ms. Sullivan.

09:38:39 Sen. Sales asked Sen. Mike Cuffe, co-sponsor of the study bill, if he wanted to comment.

09:39:07 Sen. Cuffe.

09:50:29 Sen. Sales asked Mr. Dorrington if he wanted to respond.

09:51:01 Mr. Dorrington.

09:53:01 Rep. Marler asked for clarification on the toxic effects of selenium. Ms. Kelly said because deformities are not seen in adult fish does not mean there are not toxic effects.

09:54:47 Ms. Sullivan agreed.

09:56:59 Rep. Marler asked how the model works and why the water treatment ponds were not specifically incorporated into the model.

09:58:09 Ms. Kelly said the model was used to analyze data from Lake Koocanusa.

09:58:36 Rep. Marler asked Ms. Kelly if activities in the Elk River resulted in less selenium coming downstream would it eventually be reflected in the study.

09:59:37 Ms. Sullivan provided additional information.

10:00:25 Rep. Marler commented on the amount of data and the collaborative process.

10:01:08 Recess

10:09:39 Reconvene

### **Proposed work plan for HJ 37**

- 10:09:49 Mr. Dorrington provided an introduction.
- 10:10:50 Sen. Sales thanked Jon Metropoulos and Mr. Dorrington for their work. He thanked Sen. Cuffe and Rep. Gunderson for bringing the issue forward.
- 10:11:25 Ms. Kelly said she wanted to remind the committee of the April deadline and the complexity of the science. She said the DEQ is offering to be an active part of how the committee would like to work to move forward on the work plan and to put forth some conceptual ideas.

### **Public comment**

- 10:13:56 Jon Metropoulos, attorney, representing Teck American
- 10:17:02 Vicki Marquis, attorney, Holland & Hart, LLP, Billings, presented the draft work plan developed by Teck.
- 10:36:46 Josh Letcher, Lincoln County commissioner ([Exhibit 8](#))
- 10:45:07 Sen. Mike Cuffe, SD 1
- 10:54:06 John Kilpatrick, director, U.S. Geological Survey (USGS), Water Science Center, Helena
- 10:56:55 Wyatt Petryshen, Wildsight, Kimberley, British Columbia
- 11:01:26 Dr. Ellie Hudson-Heck, Idaho Conservation League
- 11:03:46 Jason Gildea, water policy advisor, EPA Region 8
- 11:07:19 Rep. Gunderson provided comments as a member of the public.
- 11:08:41 Sen. Cohenour requested that Rep. Gunderson continue his comments during committee discussion.
- 11:08:52 Sen. Sales
- 11:09:20 Rep. Gunderson continued.
- 11:10:48 Richard Janssen, Jr., Natural Resources Department head, Confederated Salish and Kootenai Tribe (CSKT) ([Exhibit 9](#))

### **Committee discussion**

- 11:13:46 Sen. Cohenour asked Sen. Sales if the committee should question members of the public now or wait to have a panel discussion at a future meeting.
- 11:14:52 Sen. Cohenour said she recommends getting information from other entities that participated in gathering the data and creating the model, the peer review, and hearing from the EPA on their guidelines.
- 11:16:01 Rep. Knudsen asked if there has been any study done with the water quality data collected from Lake Koocanusa, showing that reproduction and the number of fish has substantially declined.
- 11:16:56 Mr. Dorrington redirected the question to Ms. Sullivan.
- 11:18:22 Sen. Sales said Rep. Cuffe would like to go on record that he appreciates the comments from the CSKT biologist regarding the consumption of fish in Lake Koocanusa and stands corrected and apologizes for his inaccuracy.
- 11:18:56 Rep. Gunderson asked about making a proposal to extend the time for the study. Sen. Sales said it can be done under administrative matters.

### **STRINGENCY REVIEW OF 17.30.632 (7)(a)**

11:20:02 Andrew Cziok, attorney, Agency Legal Services Bureau, Attorney General's office, said he has been tasked to advise the Board of Environmental Review and be involved with the stringency review process.

### **Committee Discussion**

11:25:35 Rep. Knudsen asked Mr. Cziok about the date for the public hearing.

### **Public comment**

11:27:11 Ms. Hudson-Heck

### **Committee discussion continued**

11:27:52 Sen. Cohenour asked Mr. Cziok how the committee's work will interact with the work he is doing with the Board.

11:29:05 Sen. Sales thanked Mr. Cziok.

### **ADMINISTRATIVE MATTERS**

11:29:32 Sen. Sales opened discussion on next steps.

11:29:49 Sen. Cohenour said her recommendations include bringing the stakeholders together, hearing directly from the EPA on its guidelines, and getting an understanding from the CSKT of their participation and expectations. She said she would also like to include panelists from the Canadian water quality division and the Idaho Department of Environmental Quality.

11:32:15 Sen. Cohenour said she recommends inviting FWP to talk about the data they have from the 2021 study season.

11:32:56 Rep. Gunderson said he agrees with the recommendations from Sen. Cohenour. He said he has not been able to find any peer review of DEQ's technical support document and asked if the USGS can comment and provide clarification.

11:34:00 Sen. Sales said he wants to keep the discussion on the intent of the study bill and not extend the work that has been done.

### **Direction to Staff**

11:35:00 Sen. Sales asked Mr. Mohr if he needed additional direction from the committee for the panel discussion.

11:35:32 Sen. Sales asked for input from the committee.

11:35:53 Sen. Cohenour provided her recommendations.

### **Future Meeting Dates**

11:37:38 Sen. Sales asked about scheduling the next committee meeting in February.

11:38:17 Rep. Curdy said he agrees on moving forward and scheduling a meeting in February.

11:38:59 Sen. Sales said he will work with staff on scheduling the meeting and putting together the agenda.

11:39:41 Rep. Gunderson said the discussion needs to be specific on selenium and not on a toxic chemical going down river. He commented on not following the sponsor's intent of the study bill.

**Motion**

11:41:00 Rep. Gunderson moved to change the conclusion date for the study from April 1 to August 1.

**Discussion on the motion**

11:41:34 Sen. Sales  
11:41:54 Sen. Cohenour  
11:42:50 Rep. Knudsen  
11:43:20 Sen. Sales

**Vote**

11:44:29 The motion failed 3-5 by roll call vote. Rep. Gunderson, Rep. Knudsen, and Sen. Smith voted aye. ([Attachment 3](#))  
  
11:45:14 Sen. Sales said he will reach out to committee members on the meeting date.

**ADJOURNMENT**

11:45:45 Sen. Sales adjourned the meeting at 11:45 a.m.