



Fire Suppression Interim Committee
60th Montana Legislature

SENATE MEMBERS

JOHN COBB
KEN HANSEN
RICK LAIBLE
DAVE LEWIS
GERALD PEASE
CAROL WILLIAMS

HOUSE MEMBERS

STEVE BOLSTAD
JIM KEANE
KRAYTON KERNS
RICK RIPLEY
CHAS VINCENT
BILL WILSON

COMMITTEE STAFF

LEANNE HEISEL, Lead Staff
TODD EVERTS, Staff Attorney
DAWN FIELD, Secretary
BARBARA SMITH, Fiscal Analyst

MINUTES
INFRASTRUCTURE SUBCOMMITTEE
of the
FIRE SUPPRESSION INTERIM COMMITTEE

February 15, 2008

Room 137, State Capitol
Helena, Montana

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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SUBCOMMITTEE MEMBERS PRESENT

SEN. JOHN COBB
SEN. RICK LAIBLE
SEN. DAVE LEWIS
SEN. GERALD PEASE
SEN. CAROL WILLIAMS
REP. RICK REP. RIPLEY
REP. CHAS VINCENT

SUBCOMMITTEE MEMBERS EXCUSED

SEN. KEN HANSEN
REP. JIM KEANE

STAFF PRESENT

DAWN FIELD, Secretary
BARBARA SMITH, Fiscal Analyst

AGENDA & VISITORS' LIST

Agenda, Attachment #1
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Infrastructure Subcommittee approved recommending to the full FSIC that certain budget items be suggested to the Office of Budget and Program Planning.

CALL TO ORDER AND ROLL CALL

SEN. COBB called the meeting to order at 1:08 p.m. The secretary noted the roll, SEN HANSEN and REP. KEANE were excused.

- 00:00:01 **Barbara Smith, Fiscal Analyst, Legislative Fiscal Division (LFD)**, briefly reviewed the agenda items that the Subcommittee would be addressing.
- 00:03:14 REP. VINCENT read a letter regarding the Lincoln County experience (EXHIBIT #1).
- 00:18:10 SEN. COBB asked for copies of letter for members. REP. VINCENT said he would provide that.
- 00:18:37 SEN. LAIBLE said REP. VINCENT's letter gets to the heart and soul of the study issue. He said the Committee's goal should be to prepare a list of achievable recommendations for the federal government and suggested that Governor Schweitzer also present the recommendations to the western governor's conference. He said it is unacceptable for the state to continue to deal with the severe conditions it has, and that this is an opportunity for change.
- 00:22:15 SEN. WILLIAMS agreed with most of SEN. LAIBLE's comments, but cautioned against getting bogged down in accusations. She said Forest Service employees work hard and aren't happy with budget cuts either. She said any recommendations must be constructive and achievable.
- 00:26:42 REP. VINCENT said the letter is about working with federal agencies to help them and said his opinion is that resources are being tied up in courts. He said a faster method to deal with this issue must be found.

PANEL DISCUSSION: WILL COORDINATION AND COLLABORATION RESULT IN MANAGEMENT AND WILL IT HELP?

- 00:29:57 **Tom France, Beaverhead National Forest Partnership**, speaking on behalf of the National Wildlife Federation, Montana Wilderness Association, Montana Trout Unlimited, and five logging companies, explained the evolution of the group's efforts to address the conditions of the Beaverhead Deer Lodge National Forest. Mr. France said the groups initially came together out of a shared belief that the Forest Service could do a better job of managing the forest, and created a strategy for improved management practices. However, the groups came to the realization that efforts had to extend beyond the Forest Service to include Congress, so over the last several months, the groups have worked to create the Beaverhead Deer Lodge Conservation, Restoration, and Stewardship Act

(EXHIBIT #2). Mr. France said copies of the draft legislation have been provided to all three of Montana's congressional delegates and that Sen. Tester has submitted it for formal drafting. He reviewed the purpose of the proposed legislation and asked the Subcommittee to take a close look. He said that changes will have to come from the congressional level, as well as through the Forest Service and other entities.

- 00:37:13 **Sherm Anderson, Beaverhead National Forest Partnership**, explained that the partnership proposal would apply only to the Beaverhead Deer Lodge National Forest and made the following points:
- the proposal advocates primary use of stewardship contracting, which would remove some of the budget issues;
 - large landscapes would be treated under the proposal, with a proactive, rather than reactive approach;
 - selective harvesting practices will be used, which will create healthier forests; and
 - key components of the partnership are: restoration, stream and fisheries enhancement, healthier forests, wildlife enhancement and management, road density, and enhanced recreational opportunities.

Mr. Anderson said the challenges would be funding, litigation, dwindling infrastructure, and the unique "vision" of each special interest group that uses the forest. He said he thinks that all concerned can come together with the common goal of healthy forests, that action is imperative, and that the Forest Service must be given the tools it needs to do what it knows needs to be done.

- 00:44:59 SEN. LAIBLE asked if the Forest Service was included in the process of creating the proposal. Mr. France said that the three conservation groups, and the logging companies created the proposal. It has been circulated nationwide for comment from 200 different groups, including federal agencies, county commissioners, recreation interest groups, and Undersecretary Ray and others at the federal level.

- 00:47:13 SEN. LAIBLE noticed that the proposal called for additional designated wilderness area acres and asked how many total acres would be taken out of regular use and put into designated wilderness areas. Mr. Anderson said the total acreage in the proposal is approximately 540,000 acres and that is already being managed as designated wilderness. SEN. LAIBLE asked what the difference is between a roadless area and a wilderness area. Mr. Anderson said roadless areas can be managed for different uses, including timber harvest; whereas wilderness can not be managed for timbering activities.

- 00:49:32 SEN. LAIBLE asked how many roads would be shut down under the proposal. Mr. Anderson said the proposal advocates 1.5 miles of road per section, which is what the current forest plan contains. He said efforts were made to ensure certainty that access to all parts of the forest would be provided. Areas that have high road density with low use are the areas that are marked for restoration. Mr. France said that of the existing 6,000 miles of roads, approximately 650 miles will

be eliminated, under the proposal. He said he would confirm this and relay the information to the Subcommittee.

- 00:55:40 REP. RIPLEY asked if local governments were asked to participate in the planning process. Mr. France said that all local governments in the affected areas were contacted with the proposal, and that five counties are supportive of the proposal and two are not.
- 00:56:58 REP. RIPLEY asked if private property groups were invited to work on the proposal. Mr. Anderson said that as the proposal was developed, the groups working on it were very clear on that fact that interests, such as land owners, recreational interests, and others, would have to be considered. He said that once the proposal was finalized, it was presented to all stakeholders for feedback. REP. RIPLEY asked if the majority of landowners support the proposal. Mr. France said that the Citizens for Better Use group and Beaverhead and Madison County Commissioners have been critical, but that he is not aware of any major property rights groups that have weighed in on the proposal. He said he thinks that many of the local constituents understand that the proposal is a fair compromise.
- 00:59:41 REP. VINCENT commended Mr. France and Mr. Anderson for the group's effort and asked how the group has handled naysayers. Mr. France said a great deal of up front effort was put in, in order to guarantee certainty for capital investment and to decrease the likelihood of roadblocks.
- 01:06:08 REP. VINCENT agreed with most of what Mr. France said, but said he also believes that there are other components involved that preclude action from taking place. He referenced the Healthy Forest Restoration Act of 2003, saying that little has changed under the Act. He asked how the proposal will be funded. Mr. France said the proposal will not cost the government money because it will utilize stewardship contracts. The revenues generated by the contracts will stay on the forest to fund restoration, which will create a perpetual motion between harvest and restoration.
- 01:10:05 REP. VINCENT asked if consideration has been given to putting the proposal out for a vote of the people. Mr. France said no, that the process has been an enormous amount of work, and that the group feels that a referendum at this point would be counterproductive. He said he is confident that the Montana congressional delegation will be supportive of the proposal and that some of the groups currently opposing this will eventually change their position.
- 01:13:59 REP. VINCENT said that he thought that people directly affected by the proposal should have a voice. He said the bottom-up approach is the only way to get true consensus.
- 01:17:05 SEN. COBB asked how long it took to finalize the proposal. Mr. Anderson said it took two years to complete. SEN. COBB asked if this particular collaboration has been more successful than others. Mr. Anderson said yes, and he discussed

other collaborative efforts that have failed. He said safeguards were built in to avoid failure. SEN. COBB asked if it was a matter of compromise. Mr. Anderson said compromise was used and discussed how the group worked to avoid fights. He said the proposal will not solve all the issues, considering the amount of forest acres that need to be treated, but that it would make a difference to a small area.

- 01:22:45 **Montana Forest Restoration Committee (MFRC), Gordie Sanders, Pyramid Mountain Lumber**, distributed copies of and discussed "*Restoring Montana's National Forest Lands: Guiding Principles and Recommended Implementation*" (EXHIBIT #3). He said the report represents a "zone of agreement" among a wide array of stakeholders.
- 01:25:05 **Bob Ekey, The Wilderness Society**, said the MFRC formed about a year ago and is comprised of hand-picked members who represent the broad interests associated with national forests. Restoration principles were written within six months but the real breakthrough was a strong implementation policy. He discussed the implementation plan (pages 5-8, EXHIBIT #3).
- 01:31:33 REP. VINCENT asked what MFRC's beginning budget was. Mr. Sanders said the initial budget was a single grant of about \$10,000. Since then, additional funding has been obtained, through the Forest Service and DNRC, for cost share grants of about \$90,000.
- 01:33:56 REP. VINCENT asked what the timeline for completion is. Mr. Ekey said he is hopeful that several projects will be accomplished in the next 12 months. The larger and more complex projects will take longer.
- 01:37:28 SEN. LAIBLE asked if the Committee has the support of the affected counties and local governments. Mr. Sanders said that some county commissioners have been more involved than others, but that the Committee tried to select individuals that represented different interests, with the expectation that they would network with others.

FOLLOW UP TO AMR REPORT

- 01:40:48 Ms. Smith said the presentation is a followup to the draft AMR, as presented to the Subcommittee last month (January 11, 2008, EXHIBIT #6). She said the Subcommittee requested that Mr. Harrington and Mr. Weldon return to give the Subcommittee a final look at the position paper.
- 01:41:11 **Bob Harrington, Forestry Division Administrator, DNRC**, apologized for any exclusions, as discussed in the WUI Subcommittee's morning meeting, saying that the oversight was not deliberate in nature. He said the draft distributed today is different from the January version. Mr. Harrington discussed "*State and Local Government Concerns with Federal Implementation of the Appropriate Management Response Policy*" (EXHIBIT #4). Mr. Harrington focused his discussion on pages 4 - 6 - recommendations. He said the recommendations are trying to identify how to avoid "the bumps in the road" in future years.

- 01:50:12 **George Weldon, United States Forest Service (USFS)**, said the USES supports the recommendations discussed by Mr. Harrington and that he hopes to have them implemented in time for the 2008 fire season. Mr. Weldon discussed a PowerPoint presentation, "*Managing Long Duration Wildfires*" (EXHIBIT #5).
- 02:03:56 **Phil Gill, Bureau of Land Management (BLM)**, discussed AMR from his perspective and experience of fighting fires in eastern Montana and agreed that AMR has been misunderstood. He said that much has been heard about long term fires that last up to 60 days in the western part of the state, but that fires in eastern Montana rarely last longer than a week. He said the appropriate management response for these fires is to aggressively but safely attack the fire because the fuel source is very fast moving. It is important to remember that AMR means different things in different areas, due to different types of landscapes and fuel types.
- 02:06:11 SEN. LAIBLE said most BLM. lands are grass, with some timbered areas. Mr. Gill said there are more timbered lands that generally thought. In response to a question from SEN. LIABLE about timber fires on BLM land, Mr. Gill said there have been two timber fires in recent years, both of which stayed under seven days. He said there was a one-day burn of about 40,000 acres in each fire, but that each fire was under control and out within seven days.
- SEN. LAIBLE asked Mr. Gill to discuss his philosophy regarding fire breaks between areas that could burn and areas that are burning. He asked Mr. Gill if the BLM uses fire breaks, and if so, are they created with a pulaski or a bull dozer. Mr. Gill said the BLM uses dozers to create fire breaks. SEN. LAIBLE said Mr. Gill had said roads act as a secondary fire break. He said earlier testimony supported removal of roads and asked Mr. Gill if removal of these roads would further hinder firefighting efforts. Mr. Gill said accessibility is an advantage but that because eastern Montana is not as mountainous as western Montana, accessibility is not as much of a problem. SEN. LAIBLE asked Mr. Gill if he would agree that roads in the forest provide a manmade natural fire break. Mr. Gill said yes.
- 02:11:11 SEN. LEWIS read a quote from Mr. Weldon regarding misdirection of resources in the 2007 fire season that appeared in a magazine last summer, and said that many of his constituents found the quote to be inflammatory. SEN. LEWIS said he understands the USFS's view, but said USFS policy has a huge impact on how the state reacts. He asked if he could assume from reading the magazine article that the USFS will back off from initial attack and structure protection. Mr. Weldon said the point he was trying to make was that while initial attack is usually successful, it isn't necessarily the wisest approach. He said fires should be allowed to burn in areas where it makes sense because suppression of all fires in all instances will result in fuels building up, eventually causing even more severe fires. He referenced the Selway-Bitterroot Wilderness, saying that the fires have been managed so well in that area, that new fire starts don't require as many resources, which frees up those resources to focus on other fires.

SEN. LEWIS said, because WUI areas are becoming so common, the Subcommittee needs to clearly understand what USFS policy is. He said, if that is the policy, it raises the risk for constituents living adjacent to wilderness areas. He asked how the USFS decides which fires to attack and which ones not to. Mr. Weldon said if it is felt that a fire will affect private property, the USFS will try to put it out. If it is felt that there is minimal risk to private property that can be mitigated, the decision may be made to manage the fires as a long-term fire. SEN. LEWIS said there appears to be a difference of opinion in how risk is assessed. He said his opinion is that there is a bigger risk than the public is willing to accept and that USFS decisions impact constituents. Mr. Weldon agreed that there is risk in all of the decisions made. Regarding the Ahorn fire, for example, the USFS did everything it possibly could to put that fire out because it recognized the high risk level. SEN. LEWIS asked if it would be fair to conclude, from a policy perspective, that the USFS is willing to accept more risk than it was 15 years ago. Mr. Weldon said the USFS is willing to take more risk where the risk has been reduced from past fires or mechanical treatment. In areas where risk remains high, the USFS will still attack fires aggressively.

02:19:14 REP. RIPLEY asked what percentage of fires are aggressively attacked and what percentage are allowed to burn as fire use fires. Mr. Weldon said that over 90% are wildland fires and less than 10% are fire use fires. REP. RIPLEY asked if the percentage of fire use fires has changed in the last 15 years. Mr. Weldon said yes, that the percentage has gone up significantly. REP. RIPLEY asked if the success rate of initial attack fires has changed. Mr. Weldon said no, that it has been consistent at 97% or 98%. REP. RIPLEY asked if it would be correct to say that the success rate has stayed the same, but that fewer fires are attacked. Mr. Weldon said it depends on the year. He said that, for example, 2006 was a low lightning year, as opposed to other years.

02:21:43 SEN. LAIBLE said he was confused because the USES keeps reiterating that it does not have a "let it burn" policy, but at the same time, it has "fire use" fires. He asked what the difference is between the two types of fires. Mr. Weldon said the USES doesn't have a "let it burn" policy because every fire requires management actions and that a management plan is developed and implemented for all fires, with measures taken to mitigate risks to private property. He said the USES takes the view that this is not a "let it burn" policy. SEN. LAIBLE said, for clarification, that fire use fires are monitored, and if risk increases to a certain level, the USES will try to control it but not put it out. Mr. Weldon said that is true.

SEN. LAIBLE referred to his discussion with Mr. Gill regarding the benefits provided by roads in firefighting efforts. He asked if the USES has concerns about its policy of removing roads and taking out manmade fire breaks. He asked if this would increase fire risk. Mr. Weldon said he is not as concerned as Mr. Gill would be, because the steep ridges in forests act as good fire breaks.

02:27:24 REP. VINCENT asked why roads were built in forests originally. Mr. Weldon said roads were put in for numerous reasons, such as timber harvest, minerals exploration, and recreational and fire access. He said that prior to aviation

resources, roads were more needed for access than they are now. REP. VINCENT said, regarding reintroduction of fire back into the Kootenai ecosystems, that there is a great amount of fuel load, but a very slim burn window, not only because of topography issues but also because of weather inversions. He asked Mr. Weldon to comment. Mr. Weldon agreed that one of the most limiting factors in prescribed burning in Montana is the narrow burn windows. He said that is why it is important to use all of the tools available, such as natural ignitions, prescribed fire under the right conditions, and mechanical logging treatments. He said the combination of all of those tools will make a difference. REP. VINCENT said his point was that, while fire is a critical component of restoration, mechanical fuel reduction has to be the primary tool.

02:32:16 SEN. COBB thanked the panelists for attending the meeting. He asked them to submit written comments, solutions, or suggestions of how to improve conditions. SEN. COBB said if the path is toward the federal government doing less structure protection and that it is more of a state function, the decision must be made on whether or not more funding is needed. If this is the trend, the State needs to know. There is a mixed message and SEN. COBB said he would like clarity. Mr. Weldon said the findings in the IOG report state that the USFS is spending too much on structure protection, so in the future, expect less structure protection from the USFS.

02:36:44 SEN. COBB suggested that the USFS review the public comment received by the FSIC and also suggested that the USFS consider holding public meetings after fires, in order to survey the public.

02:39:10 Mr. Harrington said, regarding the issue of the OIG audit and structure protection, that he believes the audit was not directed at Montana. SEN. COBB said his point is, that if changes are going to be made, all of the information must be available, if the changes are going to be meaningful and effective. He said he wants accurate information from the experts before determining what direction should be taken. Mr. Harrington said the events of the Esperanza fire was a driver for the audit, and that the community and structure protection document was intended to spur conversation of what needs to be done, in order to increase the level of understanding between the two agencies.

02:42:23 Mr. Weldon said that WUI areas are projected to double in a short time period, and the USFS concern is that its operational capability will not double. This will result in an even greater disparity between what the USFS can provide and what the public expects it to provide.

BREAK

PUBLIC COMMENT

02:55:54 Pat McKelvey, discussed the activities of the Tri-County FireSafe Working Group. He reminded the Subcommittee of the upcoming conference, scheduled for February 24-26.

FIRE SUPPRESSION FUNDING OPTIONS MATRIX

- 02:58:43 SEN. COBB explained the funding option matrix (EXHIBIT #6). He discussed a proposal that would take away the sunset provision for the \$40 million Fire Suppression Fund and put a statutory appropriation in place to fund it permanently. The amount of the appropriation would be based on a seven-year average of fire costs, with the high and low years taken out. Reimbursements from fire costs could be added back into the fund.
- 03:00:47 Ms. Smith said she would add SEN. COBB's suggestion to the matrix and provide updated copies to the Subcommittee. She asked that the members email their choices to her and that she would tabulate the responses.

PROTECTION FEE - WHAT IS IT, WHAT ARE THE ISSUES?

- 03:02:51 Ms. Smith discussed a draft summary of the fire protection fee (EXHIBIT #7). SEN. COBB said that he asked staff to prepare options on fees.
- 03:04:38 REP. VINCENT asked what the projection was for the fee ceiling. Ms. Smith said a bill was passed in the 2007 session to raise the fee to \$45 per landowner per protections district, and .25 per acre over 20 acres. The fee, right now, is at \$41.65 per landowner and .22 cents per acre over 20 acres.
- 03:05:32 SEN. COBB said there are also problems with how to classify different property. Ms. Smith said she has discussed this at length with DNRC regarding the fee assessment and the difficulty this creates for DNRC. She explained that certain Department of Revenue (DOR) definitions don't mesh well with DNRC definitions, resulting in certain types of property being treated differently in certain areas. She provided an example of a condominium in Whitefish being assessed a fire protection fee of \$1.43 to \$5 per condo unit while a home in a WUI area may be assessed a fee of \$41.65. Ms. Smith said, if this process was simplified, it would allow the DNRC employee currently working on this to be redirected to other work, which would be of additional benefit to the DNRC. SEN. COBB recommended that simplification of administration of the fire protection fee simplification be added to the matrix.
- 03:09:47 SEN. LAIBLE said this is a complex issue and said that every time a new subdivision is added, this will repeat itself over and over again. He asked if it would be simpler to allow DOR to assess the fee. SEN. COBB asked SEN. LAIBLE to look into that possibility with DOR.

BUDGET OPTIONS - DNRC IDEAS

- 03:12:09 Ms. Smith reviewed the DNRC Critical Resource Needs (EXHIBIT #8), as requested by the Subcommittee at its last meeting. She said she analyzed the list and that her analysis is in the meeting materials (EXHIBIT #9). She explained the different categories contained in her analysis.
- 03:14:39 SEN. COBB said he intends to recommend that the DNRC's requests be implemented now, and not wait until the next cycle.
- 03:15:48 **Mary Sexton, Director, DNRC**, asked to comment on the DNRC document and said:

- the list has been provided to the Office of Budget and Program Planning (OBPP) but it has not yet reached the EPP process;
- the items are not listed by priority but the DNRC's top priorities are engine crews, extended aviation coverage, county rural fire coordinators, and fire business specialists;
- her personal top priority would be the operations section supervisor because statewide coordination is an exhausting, time consuming job;
- regarding the \$40 million fire suppression budget and how best to move forward, that she would be glad to take additional recommendations to them.

03:18:24 SEN. COBB appointed REP. RIPLEY, SEN. WILLIAMS, and REP. VINCENT to review options for the next Subcommittee meeting.

03:19:29 SEN. COBB said the WUI Subcommittee has requested that the full FSIC approve a \$10,000 expenditure to conduct a wildland interface study. He said a conference call would be held next week to take that vote, and suggested that other issues could be voted on at the same time, such as the \$40 million fire suppression fund proposal to allow the DNRC to use the funding beginning July 1, 2008; and the DNRC critical needs requests. He read through the list of DNRC requests.

03:31:38 After discussion by the Subcommittee members and DNRC staff, SEN. COBB **moved** to recommend options 1, 2, 4, 5, and 7 to the full committee for approval; and that the full committee recommend to the DNRC and OBPP that these be funded as one-time fiscal year 2009 expenditures. The **motion passed** on a unanimous voice vote. SEN. COBB said the members would be advised of the date and time of the conference call and that members would have 24 hours to respond with their vote.

03:33:41 Director Sexton said DNRC staff would attend the conference call, in the event Committee questions. SEN. COBB asked SEN. LAIBLE to update the WUI Subcommittee on the actions of the Infrastructure Subcommittee.

INSTRUCTIONS TO STAFF, MEMBER ISSUES

03:35:22 SEN. WILLIAMS suggested sending a letter to Montana's congressional delegation expressing concern regarding the Forest Service funding cuts. SEN. LAIBLE supported her suggestion.

03:37:01 SEN. LEWIS said that he is hesitant to send a letter until more information is available on the federal budget. He asked Ms. Smith to research the issue further. SEN. COBB said the issue would be put on the March meeting agenda for the full committee.

03:37:48 Ms. Smith asked for confirmation that the conference call agenda will include a vote on the \$10,000 expenditure to Headwaters Economics for the wildland urban interface model study, and items 1, 2, 4, 5, and 7, from the Fire Suppression fund for fiscal year 2009. SEN. COBB said members could leave their vote with Ms. Smith today, if they wished.

03:38:50 SEN. LAIBLE announced that the Ravalli County Big Sky Coalition will be meeting on March 1, and that scientists from across the nation will participate in a discussion regarding producing biofuel from timber products. REP. VINCENT announced that there will be a Contractor Subcommittee meeting on March 4, in Helena.

ADJOURNMENT

03:40:31 With no further business before the Subcommittee, SEN. COBB adjourned that meeting at 4:45 p.m.

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