



ENVIRONMENTAL QUALITY COUNCIL

PO BOX 201704
HELENA, MONTANA 59620-1704
(406) 444-3742

GOVERNOR BRIAN SCHWEITZER
DESIGNATED REPRESENTATIVE
MIKE VOLESKY

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NORMA BIXBY
SUE DICKENSON
CHRISTOPHER HARRIS
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JIM PETERSON

SENATE MEMBERS
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GREG LIND
DANIEL MCGEE
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ROBERT STORY
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PUBLIC MEMBERS
BRIAN CEBULL
KRIS KOK
BUZZ MATTELIN
DOUGLAS MCRAE

COUNCIL STAFF
KRISTA LEE EVANS, Research Analyst
JOE KOLMAN, Research Analyst
CYNTHIA PETERSON, Secretary
TODD EVERTS, Legislative Environmental Analyst

MINUTES

Date: May 23, 2005
Part 2

Room 102, State Capitol Building
Helena, Montana

Please Note: These are outlined minutes with an audio recording. These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities.

Continued from Part 1

00:00:01 The meeting was called back to order by Chairman McNutt.

Election of the EQC Chair and Vice Chair

00:00:26 Sen. Wheat nominated Rep. Harris for Chairman.

00:01:16 Sen. Story nominated Rep. Barrett for Chairman.

00:03:18 Rep. Dickenson asked about the responsibilities of being the EQC Chairman.

00:03:49 Chairman McNutt explained the duties of the EQC Chairman and explained his past experience in being the EQC Chairman. Chairman McNutt stated the EQC Chairmanship is not the place for partisan leadership; rather, it is necessary for the Chairman to be able to backup and address the issues.

00:08:01 Rep. Barrett spoke about why she would like to be Chairman of the EQC.

00:09:34 Rep. Harris spoke about why he would like to be Chairman of the EQC.

00:10:32 A roll call vote resulted in a tie vote with Rep. Peterson voting via telephone.

00:13:03 Rep. Dickenson asked for information about utilizing Co-Chairmen and whether having a Co-Chairmanship has worked in the past.

00:13:23 Sen. McGee stated in the past, Co-Chairmanships have worked well depending on the personalities of the Co-Chairmen. Rep. Barrett and Rep. Harris agreed they could work together.

00:17:09 Sen. Story moved the EQC accept Rep. Barrett and Rep. Harris as Co-Chairmen. Sen. Wheat expressed his disappointment and stated that he hoped the EQC would not begin to slip into the role of a partisan committee. The motion carried unanimously. Rep. Barrett took the Chair.

00:19:16 The EQC members discussed the procedure for electing a Vice-Chairman. Sen. McGee suggested one of the newly elected Co-Chairmen could be Vice-Chairman. Sen. Shockley asked if a Vice-Chairman could be elected for purposes of HB 790 only. Sen. Story wondered if the rules could be changed so that Rep. Harris and Rep. Barrett would alternate being Co-Chairman and Vice-Chairman. Sen. Larson stated he was uncomfortable with the way the election of a Vice-Chairman was proceeding. Sen. Wheat suggested appointing two members of the Senate, one Democrat and one Republican, as Co-Vice-Chairman. Mr. Everts pointed out that HB 790 speaks to one Chairman and one Vice-Chairman.

00:24:14 Sen. Wheat suggested the EQC recess to discuss the issue with Mr. Petesch.

COMMITTEE RECESSES

(Tape 3; Side B)

00:32:19 Chairman Barrett reported that Mr. Petesch had advised that the EQC would need to elect a Vice-Chairman because the election of a Vice-Chairman was required by HB 790.

00:32:54 Sen. McGee nominated Sen. Larson and Sen. Story as Co-Vice Chairmen. Rep. Dickenson nominated Rep. McNutt for Vice-Chairman.

00:34:59 Rep. McNutt and Sen. Larson are elected as Co-Vice Chairmen by unanimous voice vote.

Montana Water Center Update

00:35:39 Ms. Evans introduced Gretchen Rupp, Director of the Montana University System Water Center.

00:36:28 Ms. Rupp gave a presentation on Montana University System Water Center (**EXHIBIT 5**) and (**EXHIBIT 6**). Ms. Rupp explained the mission of the Montana University System Water Center as providing sponsor water-

related research, assistance in educating future water professionals, and providing outreach services to working water professionals in Montana.

1. Questions from the EQC

00:54:36 Sen. McGee asked whether the Montana University System Water Center developed water policy, and Ms. Rupp explained it is not the role of the Montana University System Water Center to develop policy.

00:55:57 Sen. McGee asked if they perform research on groundwater-related issues. Ms Rupp explained they do perform research on groundwater. Ms. Rupp explained the use of seed grants that are used for research. Sen. McGee asked if they had looked at the relationship between groundwater and sewage disposal in Montana. Ms. Rupp replied they had, but not at specific home sites; rather, upstream, downstream, up-gradient, and down-gradient studies of subdivisions. The studies included bacteria and viruses. Sen. McGee asked if the information had been made available to DEQ, and Ms. Rupp replied the information was reported to DEQ.

00:59:39 Chairman Barrett asked about water banking and wondered how far behind Montana is in relation to the surrounding states. Ms. Rupp could not give an answer and offered to obtain the information for Chairman Barrett.

Drought Update

01:00:36 Jess Aber, Department of Natural Resources and Conservation, Water Resources Division, and staff for the Governor's Drought Advisory Committee, gave a presentation on Montana's drought. Mr. Aber revealed that south-central Montana is facing long-term deficits from the drought. Mr. Aber stated that there is improvement in Montana's drought situation starting from the east and moving west across the state, although he noted lack of snow pack is still an area of concern.

(Tape 4; Side A)

01:19:05 Questions from the EQC—None.

Introduction and Review of Interim Work Plan Options

2. Work Plan Option Matrix Introduction--Mr. Everts

01:19:54 Mr. Everts reviewed the work plan process and submitted a draft work plan (**EXHIBIT 7**) and matrix (**EXHIBIT 8**). Mr. Everts explained the breadth of the statutory responsibilities and studies assigned to the EQC are immense and that the EQC's work must be completed by September 15 2006. Mr. Everts reviewed the availability of staff

resources. Mr. Everts urged the EQC to prioritize due to its limited resources.

3. Review of Individual Work Plan Elements--EQC Staff

- 01:27:18 Ms. Evans reviewed the options regarding HB 790. Ms. Evans explained HB 790 is law and was specific as to what needed to be done. Mr. Everts clarified that the EQC is not limited to options provided by staff and could pursue other options that it deemed to be more appropriate.
- 01:29:22 Mr. Everts addressed HJR 33 and provided clarification on options. Mr. Everts pointed out that Legislative Council had recommended the issue of harvesting timber from school trust lands be addressed by a staff white paper. Mr. Everts explained the question to be answered is whether the DNRC should be statutorily authorized to sell logs directly from state lands. Mr. Everts suggested a working group could be formed with DNRC to form policy options and report to the EQC. Alternatively, staff could speak with the parties and come up with potential policy actions.
- 01:31:37 Sen. Wheat commented on HJR 33 and reported that Legislative Council thought the issue could be dealt with by a white paper, and the staff person drafting the white paper could come before EQC and explain any issues they thought needed to be addressed.
- 01:32:25 Rep. Dickenson asked about staff time in creating a white paper and whether that time would be deducted from EQC's allotted staff time, Mr. Everts provided clarification and explained the time would be deducted from EQC.
- 01:33:13 Leanne Kurtz, Research Analyst, Legislative Services Division, addressed the HJR 10 study of fire suppression statutes. Ms. Kurtz explained the Resolution notes that wildfires are recurring and are costly, and that costs and risks increase as more people move into wildlands and fuel accumulations increase. Montana statutes are either outdated or silent regarding wildland fires. The Resolution directs that the study develop, consolidate, and update wildland fire-related statutes collaborating with DNRC or other appropriate entities. The Resolution also directs the study to address dangerous environmental conditions in areas of wildland urban interface, improve wildland fire suppression and mitigation, and recommend legislation to fund wildland fire protection and suppression. Ms. Kurtz suggested starting with the DNRC audit that brought about the Resolution and inventorying current law and looking at law in neighboring states. Ms. Kurtz suggested including DNRC, the U.S. Forest Service, and local governments.
- 01:38:00 Chairman Barrett asked about inventorying current law and asked if the inventory would be statewide. Ms. Kurtz replied it would be an inventory of current Montana law and policy, as well as federal policy and the policy in neighboring states.

01:38:42 Rep. Bixby asked if the DNRC audit contained any recommendations. Ms. Kurtz explained it did contain recommendations. Rep. Bixby requested a copy of the audit.

01:39:41 Chairman Barrett asked Mr. Volesky about the roadless initiative and whether it could be combined with the EQC study.

01:40:16 Mr. Volesky responded there is not a firm plan for petitioning for the roadless initiative. Mr. Volesky acknowledged the overlap.

01:41:23 Mr. Everts continued and addressed HJR 34 regarding superfund sites. Mr. Everts explained concern across Montana about the impacts on communities and community infrastructures and the lack of timeliness of superfund cleanup. The study will request an inventory of superfund sites in Montana and the current status of the cleanup efforts, decision documents, and a proposed time frame for completion of cleanup. The study also requests alternatives for communities faced with untimely cleanup. The study should also include a summarization of water, infrastructure, and economic development needs of communities directly impacted by superfund sites. Options include assigning staff to generate a white paper, or assign the study to the EQC Oversight Committee or the EQC itself. A community informational guide could also be generated.

01:43:49 Sen. Larson asked which superfund sites in particular were addressed by HJR 34. Mr. Everts replied the Resolution did not identify particular sites.

01:44:28 Mr. Everts continued reviewing the matrix and the statutory duties.

01:45:23 Ms. Evans directed the EQC to page 7 of the Work Plan and reviewed EQC's statutory duties and obligations relating to Montana's water policy. Ms. Evans suggested the EQC may want to keep an eye on TMDLs and the 2012 deadline and the requirements of HB 22. Ms. Evans reviewed the options with the EQC.

01:50:22 Mr. Everts reviewed the EQC's general statutory duties, agency oversight, and the development of various EQC educational publications.

01:58:01 Sen. McGee asked about the eminent domain publication and whether it reflected 2001 legislation. Ms. Evans responded the publication was updated after the 2001 Legislative Session.

01:58:40 Sen. Story inquired about legislation that may have been passed that would require the Code titles to be updated and reorganized. Sen. Story believed if the legislation was passed, the EQC would need to update some of the titles. Mr. Everts offered to find out if the legislation passed.

01:59:33 Rep. Dickenson commented on permitting changes and wondered whether it was necessary to update the permit index. Mr. Everts

responded there is always a need to update should the EQC decide to have the index updated.

(Tape 4; Side B)

- 02:01:05 Chairman Barrett requested a list of upcoming issues that the EQC is statutorily required to review, as well as upcoming administrative agency rules for agencies the EQC oversees.
- 02:02:40 Sen. Lind asked whether the publications are available electronically, and Mr. Everts replied the publications are available on the EQC website.
- 02:03:06 Mr. Kolman reviewed the topics suggested by members of the EQC. The first topic was DNRC funding to administer state lands.
- 02:04:27 Sen. Wheat provided an explanation of why review of state trust lands is necessary and why the EQC should be involved. Sen. Wheat believed there is a huge liability to the state related to the administrative fees and Sen. Wheat believed the issue should be confronted.
- 02:05:29 Mr. Kolman continued and explained that DEQ has oversight of holding ponds and the study would examine the regulations regarding neighbor notification.
- 02:05:52 Mr. McRae spoke about effluent from coal plant holding ponds and explained why he believes EQC should address the issue. Mr. McRae spoke about his personal experience with leaking holding ponds.
- 02:11:38 Sen. Wheat wondered who currently has the water quality groundwater monitoring responsibility. Mr. McRae was uncertain who had the oversight.
- 02:12:13 Mr. Kolman addressed the EQC's role in the roadless petition process.
- 02:12:57 Chairman Barrett explained that the EQC should let the Governor know that it would be willing to assist with the roadless petition.
- 02:13:29 Mr. Volesky clarified that the Governor's Office is still trying to work through the process and that no decisions have been made; however, Mr. Volesky stated he was sure the Governor would entertain the prospect of having the EQC become involved.
- 02:15:08 Mr. Kolman continued and addressed postponement of the general bison hunt.
- 02:15:46 Chairman Barrett provided an explanation and stated the bison hunt went all the way through the process and was abruptly cancelled.

02:16:14 Mr. Kolman explained the DEQ postponed the release of an Environmental Impact Statement on the tire burning at Three Forks. The study would examine the role of input as it relates to MEPA. Chairman Barrett commented that EQC should provide agency oversight and keep abreast of what is occurring.

02:16:59 Mr. Everts addressed page 17 of the Work Plan and reinforced the time constraints. Mr. Everts reminded the EQC that legislation recommendation must be done in draft by June 1, 2006, so it can go out for public comment.

Public Comment Regarding EQC Work Plan

02:19:03 Mark Blitz, Chairman of the Coal Bed Methane Task Force, Northern Plains Resource Council, and a rancher and irrigator, spoke about HB 790 and recommended Option A.

02:19:35 Mary Sexton, Director, Department of Natural Resources and Conservation, spoke on behalf of HJR 10. Director Sexton recommended Option A and cited a comprehensive broad nature of the study as necessary. Director Sexton also suggested utilizing a working group which would include EQC members, fire wardens, tribal organizations and the U.S. Forest Service.

02:20:38 Ray Muggli, an irrigator and farmer west of Miles City, testified he is deeply concerned about the effects of coal bed methane on water quality. Mr. Muggli recommended Option A.

02:21:20 Cathy Swift, an attorney for the Board of Regents and Commissioner of Higher Education, spoke in favor of Sen. Wheat's proposal to review the funding for the administration of trust lands. Ms. Swift noted the issue had been under discussion for a number of years. Ms. Swift stated she would appreciate an opportunity to continue working on the issue.

02:22:29 Tom Schultz, Department of Natural Resources and Conservation, also supported a study to look at how DNRC's trust lands are funded. Mr. Schultz requested one or two members of the EQC sit on the working group to add legitimacy to the process.

02:22:57 Colleen Simpson, a landowner and member of the Crow Tribe, expressed concern about water quality and stated she supports Option A for HB 790.

02:23:20 Bob Harrington, Forestry Division Administrator, Department of Natural Resources, supported Option A for HJR 10. Mr. Harrington spoke about past legislative attempts in 2001. Mr. Harrington agreed with participation from local governments.

- 02:26:34 Frank Gilmore, Montana Tech, encouraged the EQC to set up a work group to continue the efforts to find a solution to the funding of the management of the trust lands.
- 02:27:05 Jim Rogers, Colstrip, spoke in support of a full study for HB 790 and drafting legislation. Mr. Rogers would like to see problems prevented now rather than mitigated later. Mr. Rogers would like to see the State, the coal bed methane industry and agricultural users on a level playing field.
- BREAK**
- 02:50:25 Chairman Barrett solicited comments from EQC members who would be interested in serving on the HB 790 Subcommittee.
- 02:50:50 Mr. Mattelin spoke on why he should be on HB 790 Subcommittee. Mr. Mattelin is a farmer in Roosevelt County and owns minerals and surface land. Mr. Mattelin is interested in water quality.
- 02:51:04 Mr. Cebull is a Petroleum Reservoir Engineer with Nance Petroleum. Mr. Cebull has personally dealt with issues related to coal bed natural gas, as well as conventional oil and gas. Mr. Cebull believed he could bring the industry's perspective to the HB 790 Subcommittee.
- 02:52:09 Rep. Dickenson expressed a strong interest in serving on the HB 790 Subcommittee. Rep. Dickenson suggested she is very informed and that she has studied the issue. Rep. Dickenson stated she would like to see the HB 790 Subcommittee balanced and include tribal, cultural, and academic issues.
- 02:54:39 Sen. Wheat explained his interest in being on the HB 790 Subcommittee. Sen. Wheat sponsored SB 258 in the 2005 session which would promote agreements between surface and subsurface owners. Sen. Wheat stated he is interested in natural resources.
- 02:56:30 Sen. McGee explained his qualifications and why he would like to be on the HB 790 Subcommittee.
- 02:57:45 Rep. Bixby spoke about why she would like to be on the HB 790 Subcommittee. Rep. Bixby lives in coal bed methane country and stated the issue is very important to her. Rep. Bixby represents two Indian tribes and stated the Crow Tribe is in the process of beginning their development and the Northern Cheyenne Tribe does not want development. Rep. Bixby would like to promote the interests of the two tribes and to ensure coal bed methane is developed in a responsible manner.
- 02:58:56 Sen. Story expressed his interest in sitting on the HB 790 Subcommittee.

- 02:59:37 Mr. Kok expressed his interest in the HB 790 Subcommittee. Mr. Kok stated he would be glad to help, but admitted there were other topics of the Work Plan that interested him more.
- 03:00:18 Mr. McRae is a Supervisor on the Roosevelt Conservation District. Mr. McRae spoke about his qualifications and past experience with coal bed methane development.
- 03:01:10 Sen. Shockley spoke about his interest in HB 790 and his qualifications.
- 03:01:51 Rep. McNutt spoke about Rep. Peterson's interest and qualifications for being on the HB 790 Subcommittee

(Tape 5; Side A)

BREAK

- 03:05:49 Chairman Barrett announced the HB 790 Subcommittee will consist of Sen. Wheat (Chairman), Sen. McGee (Vice-Chairman), Rep. Bixby, Rep. Peterson, Mr. McRae, and Mr. Cebull. Chairman Barrett asked the EQC members to provide input as to the six members at large for HB 790.
- 03:07:08 Sen. Wheat announced the HB 790 Subcommittee will meet at 7:30 a.m., May 24, 2005.
- 03:07:28 Mr. Everts made an announcement regarding dinner.

The meeting adjourned.