



# ENVIRONMENTAL QUALITY COUNCIL

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**GOVERNOR BRIAN SCHWEITZER**  
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CHRISTINE KAUFMANN  
DANIEL MCGEE  
JIM SHOCKLEY  
ROBERT STORY JR

**PUBLIC MEMBERS**  
JEFF PATTISON  
BRIAN CEBULL  
DIANE CONRADI  
DOUG MCRAE

**COUNCIL STAFF**  
TODD EVERTS, Lead Staff  
JOE KOLMAN, Research Analyst  
SONJA NOWAKOWSKI, Research Analyst  
HOPE STOCKWELL, Research Analyst  
CYNTHIA PETERSON, Secretary

## MINUTES

Approved May 28, 2009

Date: September 9, 2008

Room 102  
State Capitol Building

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. **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.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

### **COMMITTEE MEMBERS PRESENT**

SEN. DAVID WANZENRIED, Chair  
REP. CAROL LAMBERT, Vice Chair  
SEN. CHRISTINE KAUFMANN  
SEN. JIM SHOCKLEY  
SEN. ROBERT STORY JR  
REP. NORMA BIXBY  
REP. SUE DICKENSON  
REP. JULIE FRENCH  
REP. CHAS VINCENT  
REP. CRAIG WITTE  
MR. BRIAN CEBULL  
MR. JEFF PATTISON  
MS. DIANE CONRADI  
MR. MIKE VOLESKY

### **COMMITTEE MEMBERS ABSENT**

SEN. BOB HAWKS  
SEN. DANIEL MCGEE  
MR. DOUG McRAE

### **STAFF PRESENT**

TODD EVERTS, Lead Staff  
JOE KOLMAN, Research Analyst  
SONJA NOWAKOWSKI, Research Analyst  
HOPE STOCKWELL, Research Analyst  
CYNTHIA PETERSON, Secretary

### **Visitors**

Visitors' list ([Attachment 1](#))  
Agenda ([Attachment 2](#))

### **COMMITTEE ACTION**

- The EQC voted to allow the DEQ's list of proposed legislation to proceed for purposes of pre-introduction.
- The EQC voted to allow FWP's list of proposed legislation to proceed for purposes of pre-introduction.
- The EQC authorized staff to draft a bill for the purposes of pre-introduction that encompasses the six topics proposed by the Petroleum Tank Release Compensation Board (Exhibit 8).
- The EQC adopted the Petroleum Tank Release Fund Report.
- The EQC adopted the Trust Land Management Report.
- The EQC approved LC 0274 for purposes of pre-introduction.
- The EQC approved LC 6008, as amended, for purposes of pre-introduction.
- The EQC approved LC 7001, as amended, for purposes of pre-introduction.
- The EQC approved LC 5016 for purposes of pre-introduction.

### **CALL TO ORDER AND ROLL CALL**

00:00:01 Rep. Carol Lambert, Vice Chair of the Environmental Quality Council (EQC) reconvened the meeting at 8:00 a.m. The secretary noted the roll ([Attachment 3](#)).

## **AGENDA**

### **UPDATE ON WATER POLICY INTERIM COMMITTEE ACTIVITIES - Mr. Kolman**

00:00:49 Mr. Kolman reported on the Water Policy Interim Committee (WPIC) and stated the WPIC is considering several bill drafts, including revising the water permitting process, performing a state-wide hydrogeological study, funding water and sewer districts, changing enforcement mechanisms, and requiring public sewer and water systems for certain subdivisions. The WPIC's last meeting will be held on September 11, 2008.

#### **Questions from the EQC**

00:03:00 Rep. Lambert thought there already was a loan program available for the water district program. Mr. Kolman agreed there are several grant and loan programs and clarified the WPIC identified a gap for new system loans and grants.

### **UPDATE ON ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE ACTIVITIES - Ms. Nowakowski**

00:04:38 Ms. Nowakowski reported on the Energy and Telecommunications Interim Committee (ETIC), and stated the ETIC had wrapped up its business and adopted the carbon sequestration study report, but there will not be any carbon sequestration legislation proposed by the ETIC. Ms. Nowakowski explained the ETIC had an oil pricing and production panel presentation at its last meeting. Ms. Nowakowski identified energy policy development as an issue during the next Legislative Session.

#### **Questions from the EQC**

00:08:45 Sen. Shockley wondered how advanced the technology is to turn CO<sub>2</sub> into a liquid. Ms. Nowakowski reported the procedure is developing and pilot projects are being implemented.

00:10:00 Rep. Lambert asked if a company in the Baker area is using CO<sub>2</sub> to obtain more oil. Ms. Nowakowski was not certain but agreed the practice is occurring in Wyoming and Colorado.

00:10:47 Mr. Volesky stated Encore is using CO<sub>2</sub>, but the CO<sub>2</sub> it is using is coming in by tanker rather than being piped.

00:11:27 Sen. Story asked whether the CO<sub>2</sub> is being purified before use. Ms. Nowakowski stated the CO<sub>2</sub> is being purified and clarified the CO<sub>2</sub> is not sequestered from coal-fired plants. The Environmental Protection Agency (EPA) has questioned the purity of the CO<sub>2</sub> and is concerned about the impacts to ground water.

00:13:49 Mr. Volesky informed the EQC that he discovered an explanation on sequestration of CO<sub>2</sub> on a radio program and directed the EQC members to

search the Internet for "Science Friday" for a layman's explanation of sequestration of CO<sub>2</sub>.

#### **Public Comment on WPIC or ETIC**

There was no public comment.

#### **FIRE SUPPRESSION INTERIM COMMITTEE ACTIVITIES - Mr. Everts**

00:14:45 Mr. Everts reported on the Fire Suppression Interim Committee (FSIC) which has begun to formulate its recommendations and currently has over 100 draft recommendations. The FSIC will meet on September 11, 2008, to review its draft recommendations. Mr. Everts directed the EQC members to the recommendations on the FSIC website.

#### **Questions from the EQC**

There were no questions from the EQC.

#### **WATER ADJUDICATION PROCESS OVERSIGHT**

##### **Department of Natural Resources and Conservation Update - Director Sexton**

00:18:51 Mary Sexton, Director, Department of Natural Resources and Conservation (DNRC) provided a written update on the water adjudication process ([EXHIBIT 1](#)).

00:23:47 Rep. Lambert expressed her pleasure with how the adjudication process is progressing.

00:23:55 Sen. Shockley remarked he just went through the procedure of transferring water rights and reported the DNRC staff in Missoula were uncertain how to approach the problem. Director Sexton stated the updated forms are not yet available. Director Sexton admitted there was confusion at the DNRC and the Ravalli County Clerk and Recorder's Office. Director Sexton explained DNRC is doing outreach work with title companies and County Clerks and Recorders.

#### **Public Comment**

No public comment was offered.

#### **DEQ 2009 ADDITIONAL LEGISLATIVE PROPOSALS**

##### **DEQ Staff Overview of Legislative Proposals**

00:27:12 Mr. Everts reviewed the process for the EQC's statutory oversight of the agencies.

00:28:33 Tom Livers, Deputy Director, Department of Environmental Quality (DEQ), submitted and reviewed The DEQ's Summary of Proposed Legislation ([EXHIBIT 2](#)).

**Questions from the EQC - Certification for Wastewater Collection System Operators.**

00:31:49 Sen. Shockley asked whether someone fell ill because wastewater was handled incorrectly. Mr. Livers agreed. Sen. Shockley asked how many FTEs would be needed. Mr. Livers responded the DEQ is not looking at adding any FTEs.

00:32:46 Rep. Witte asked whether septic tank pumpers would have a certification program. Mr. Livers stated the proposal would not address septic pumpers or haulers and is only for major collection systems such as municipal collection systems. Rep. Witte asked whether there would be costs to cities and counties. Mr. Livers stated there is an existing program, and the proposal would be added as a component to the existing program.

00:34:43 Rep. French asked whether the same person would be doing all the functions in smaller communities. Mr. Livers agreed. Rep. French asked whether the function would entail a need for more education and whether all the duties could be performed at the same time. Mr. Livers agreed additional training and education would be required, but did not know whether the duties could all be performed at the same time. Rep. French questioned the need to travel to obtain the necessary education and asked whether the training could be done locally. Mr. Livers agreed local training would be helpful and stated on-line training may also be available.

00:37:13 John Dilliard, DEQ, explained a spring school would be conducted in outlying communities, so operators would not have to travel great distances. Rep. French thought it would be beneficial if some of the certifications could be obtained on-line. Mr. Dilliard agreed.

00:38:51 Sen. Story was curious how 3,300 hookups became the breaking point. Mr. Dilliard explained the cutoff point was established by the EPA. Sen. Story acknowledged the provision to add a definition of "industrial waste discharge systems," which were also going to be added. Mr. Dilliard stated industrial operators are interested in being included and those systems could include wood waste processing facilities or refineries that process liquid waste. Sen. Story asked whether it would be point source waste or whether it would include non-point source waste. Mr. Dillard assumed it would all be point source waste.

00:42:09 Ms. Conradi addressed Mr. Dilliard and asked whether the wastewater collection system would include storm water or sewage. Mr. Dilliard responded it would include sewage but not storm water.

00:42:53 Mr. Pattison was curious about livestock facilities and whether those facilities would be considered an industrial waste discharge. Mr. Dilliard responded if the facility included a facility other than a stockyard, it would be considered an

industrial discharge system. Mr. Pattison asked what type of livestock facility would not be classified as an industrial discharge system. Mr. Dilliard identified a facility that was strictly confined to animal feeding.

### **Public Comment**

00:44:32 Gary Forrester, Billings, serves on the Lockwood Water and Sewer Board. Mr. Forrester believed the proposal would be difficult for smaller systems that have difficulty finding qualified applicants. Mr. Forrester believed the proposal would be a cost to the system and make it necessary to raise water rates. Mr. Forrester suggested there is a need to help smaller systems pay for the cost of training an operator.

### **Questions from the Council**

00:47:28 Sen. Kaufmann asked what the cost would be to obtain certification. Mr. Livers did not believe there would be any cost passed on. Mr. Livers viewed the problem as a narrowing of the applicant pool and suggested a certified operator could command a higher salary.

00:48:49 Sen. Story summarized a certified operator would be required for systems above 3,300 people. Mr. Livers agreed the cutoff was 3,300 people, not hookups. Sen. Story asked whether the legislation would include a grandfather provision or a period of time in which to become certified. Mr. Livers agreed the program would need to be structured with phase-in time.

00:50:03 Rep. French asked how the DEQ currently ensures water is being handled appropriately. Mr. Dilliard explained wastewater treatment facilities are already required to be certified by the DEQ, and the legislation would require certification for wastewater system operators. Rep. French asked who is currently checking on the distribution systems. Mr. Dilliard responded nobody.

00:51:35 Rep. Vincent asked whether the state is going to have to implement certification to retain primacy. Mr. Dilliard responded it is not demanded by the EPA.

### **Public Water Supply Significant Deficiencies**

00:52:20 Mr. Livers continued reviewing Exhibit 2.

### **Questions from the EQC**

00:54:00 Rep. Vincent wondered what would constitute a significant deficiency. Mr. Dilliard explained a significant deficiency would be something that would be an imminent threat to public health. Rep. Vincent asked how the threat would be measured. Mr. Dilliard identified one threat as being a source of nonpotable

water finding its way into the drinking water system. Rep. Vincent asked how many systems had currently been identified. Mr. Dilliard cited several current examples.

- 00:58:42 Sen. Shockley wondered why the offenders choose not to fix the deficiencies. Mr. Dilliard explained the offenders often do not want to spend the money, and the DEQ's advice is often ignored.
- 00:59:43 Sen. Story asked whether there is an inspection program and whether the program would be enlarged. Mr. Dilliard responded there is an inspection program which was required by federal rule. Sen. Story asked what the proposed remedy would be for not fixing a deficiency. Mr. Dilliard responded the DEQ would not shut down the system but would assess fines for noncompliance.
- 01:01:36 Mr. Livers clarified the proposed legislation is the same bill as previously presented.
- 01:01:57 Rep. Dickenson asked whether the issue was identified in the audit. Mr. Livers stated a review of the drinking water program by EPA did point out several deficiencies, including a sense that the DEQ is understaffed in administering the Safe Drinking Water Act.
- 01:03:12 Mr. Dilliard responded the EPA questioned whether the DEQ could enforce one of the EPA's new regulations that requires systems to fix significant deficiencies.
- 01:03:56 Ms. Conradi asked whether the DEQ anticipates having to obtain court orders to require repairs. Mr. Livers responded if the authority is in law, and if the DEQ is unable to get compliance, the DEQ could proceed with enforcement action. Ms. Conradi was concerned fines alone may not solve the problem. Mr. Livers explained the DEQ tries to assist a system in coming into compliance before enforcement action is taken.
- 01:05:49 Mr. Pattison asked about one of Mr. Dillard's examples and whether there was a special screen required. Mr. Pattison did not understand why such a simple fix would not be accomplished. Mr. Livers replied sometimes fixes are relatively simple and sometimes there is a resistance to regulation. Mr. Pattison wondered if there was a communication issue or just a refusal to comply. Mr. Livers stated communication is straightforward, but the DEQ has no authority to enforce.

### **Public Comment**

There was no public comment offered.

### **Amend the Environmental Rehabilitation and Response Account (ERRA) to Provide for Cleanup of Certain Solid Waste Sites**

- 01:07:55 Mr. Livers reviewed the legislative proposals contained in Exhibit 2.

### **Questions from the EQC**

- 01:09:59 Sen. Shockley asked whether the proposal would address old junk yards. Mr. Livers agreed. Sen. Shockley wondered where the money would come from and how much it would cost. Mr. Livers explained they are concerned about the potential demand, but the ERRA is currently under-utilized.
- 01:11:19 Ms. Conradi asked whether the clean up order would be a court order. Mr. Livers explained it could be an administrative order or a court order. Ms. Conradi asked whether the funds could be available prior to litigation being commenced. Mr. Livers responded the funds could be available when an administrative order is issued.
- 01:12:01 Rep. Vincent asked whether the account is only available for solid waste. Mr. Livers agreed the account could not be used for meth lab cleanup and stated the uses are identified in §75-1-110, MCA. Rep. Vincent asked whether the fund could be used for hazardous waste cleanup. Mr. Livers agreed.
- 01:13:53 Rep. Witte asked how much money is available in the ERRA. Mr. Livers stated currently there are available funds of approximately \$335,000.

### **Public Comment**

There was no public comment offered.

### **Revise Biodiesel Incentives**

- 01:14:42 Mr. Livers directed the EQC members to the bulleted items contained in Exhibit 2 and stated the DEQ is proposing dropping the first bulleted item. Mr. Livers reviewed the purpose of the second bulleted item.

### **Questions from the EQC**

- 01:16:41 Sen. Shockley wondered where the biodiesel would come from. Mr. Livers identified successful technology and better energy balance as differences between ethanol and biodiesel.
- 01:17:53 Sen. Story identified one issue with ethanol as being the fuels tax and running an untaxed fuel on the highways. Mr. Livers stated the proposal applies to commercial grade biodiesel.
- 01:20:17 Jim Lynch, Director, Montana Department of Transportation (MDT), agreed the legislation needed to have the details worked out.
- 01:21:38 Mr. Pattison noted there would be a blending of biodiesel with taxable fuel. Mr. Pattison sought to know the credit against taxes for biodiesel. Director Lynch was not certain, but stated the ethanol credit is four cents. Also, there would be



a legislative incentive for producers of ethanol. Mr. Livers did not readily have the answer on the existing credit and offered to obtain the information.

01:23:39 Rep. Lambert believed a truck in Broadus regularly picks up oil and wondered if they were processing the oil and selling it under the table. Mr. Livers did not believe that was occurring and thought the biodiesel was either for the individual's consumption or being produced for sale. Rep. Lambert asked whether the proposal would provide for a better handle on the situation. Mr. Livers could not say for certain but did not believe the legislation would result in more control.

01:26:04 Sen. Story suggested the proposal would affect privately owned companies that are blending their own fuel. Mr. Livers agreed.

### **Public Comment**

There was no public comment offered.

### **Roadkill Composting**

01:27:09 Mr. Livers explained the DEQ's legislative proposal to address roadkill.

### **Questions from the EQC**

01:29:42 Sen. Story wondered who enforces Mont. Code Ann. §75-10-213. Mr. Livers responded the statute is enforced by the DEQ.

### **Public Comment**

01:30:18 Director Lynch stated compost sites are moved if MDT receives resistance from communities.

01:30:51 Sen. Story asked what MDT does with the compost. Director Lynch responded the compost is in stockpile sites and is planned for use as fill for roadways.

01:31:38 Sen. Kaufmann asked whether disease is a concern.

01:31:59 Ed Thamke, DEQ, responded the DEQ works with FWP and the MDT and checks roadkill for evidence of chronic wasting disease.

01:32:32 Sen. Shockley noted there are three agencies dealing with the disposal of dead deer and wondered if that number could be reduced to one. Mr. Thamke explained the MDT has the need to keep the highways safe; the DEQ has the responsibility for managing solid waste; and FWP is responsible for ensuring wild animals and domestic creatures are not impacted.

01:33:24 Rep. Lambert addressed Director Lynch and asked whether it is common practice for MDT to pick up dead animals. Director Lynch explained MDT

attempts to rid the roadways of dead animals. Director Lynch noted Montana leads the nation in the process.

- 01:35:12 Rep. Vincent addressed Mr. Livers and asked whether the rendering plant in Missoula is regulated by the MDT. Mr. Livers said it was not and explained the plants typically reside in rural areas.
- 01:36:16 Sen. Shockley moved that all the DEQ's bills, except the bill addressing biodiesel, be approved for pre-introduction.
- 01:36:36 Rep. Dickenson asked Sen. Shockley why he wanted to segregate biodiesel. Sen. Shockley responded he never thought ethanol was a good idea and had a problem with people starving and then using food for fuel.
- 01:38:15 Sen. Shockley's motion carried with Rep. French, Rep. Bixby, Ms. Conradi, Mr. McRae, and Chairman Wanzenried voting no.
- 01:39:04 Sen. Kaufmann moved that the biodiesel bill be approved for pre-introduction. The motion carried with Mr. Cebull, Rep. Witte, Sen. Shockley, and Rep. Vincent voting no.

## **WATER ADJUDICATION PROCESS OVERSIGHT**

### **Montana Water Court Update - Judge Loble (via conference call)**

- 01:40:30 Bruce Loble, Chief Water Judge, Montana Water Court, reported the water court is working on the existing inventory of claims with unresolved issue remarks. Judge Loble said he is attempting to balance the workload and make the process run as efficiently as possible. Additionally, five training sessions were held for the DNRC staff in Bozeman. The water court is also working with the DNRC to update the DNRC database. Judge Loble explained the district courts appoint water commissioners and identified 23 additional candidates for enforcement, and 31 enforcement projects that were created to assist water commissioners and help find glitches and errors.

### **Questions from the EQC**

- 01:43:14 Sen. Story commented he is encouraged that enforcement is occurring since small water right holders cannot afford to enforce their own water rights. Judge Loble agreed.

### **Public Comment**

There was no public comment offered.

## DEPARTMENT OF ENVIRONMENTAL QUALITY UPDATE ON PROJECT 2010

- 01:44:39 Mr. addressed the energy efficiency in state facilities and submitted "20 x 10 - State Government Leading the Way, Update for Environmental Quality Council, September 9, 2008" ([EXHIBIT 3](#)).
- 01:47:48 Sheryl Olson, Department of Administration (DOA), outlined efforts to make Montana citizens aware of efforts regarding going green. Ms. Olson invited the EQC members to view an electric truck on display at the Capitol Building. Additionally, Governor Schweitzer has encouraged state agencies to utilize more electronic meetings. Ms. Olson identified various efforts to educate state agencies about making green choices. Ms. Olson explained the State of Montana has experienced a 46 percent increase in the purchase of green office supplies since April. In addition, the DOA hosted a "Green Week."
- 01:51:15 Director Lynch explained MDT's efforts to support the 20 x 10 Initiative. Mr. Livers thanked the EQC.

### Questions from the Council

- 01:53:46 Mr. Cebull inquired about the cost of the electric truck. Ms. Olson responded the truck cost approximately \$17,700. Mr. Cebull asked what constituted green office supplies. Ms. Olson explained the answer is mixed and that "green" has to meet the federal standards, such as energy star or recycled content.
- 01:54:46 Sen. Kaufmann asked whether attention was paid to utilizing "green" cleaning products. Ms. Olson agreed only green chemicals are used on the capitol complex.
- 01:55:14 Rep. Dickenson appreciated the roundabouts at the two Helena exits.
- 01:55:39 Rep. Lambert addressed Director Lynch about the 30 mpg floor for state cars and asked whether the program tracks the actual mileage of state cars. Director Lynch explained the CAFE standards take into account type, size, and fuel to develop a standard. In addition, the vehicle maintenance system also tracks fuel economy. Rep. Lambert asked whether restrictions were placed on state vehicles to ensure the drivers cannot exceed a certain speed limit. Director Lynch responded no. Rep. Lambert also asked whether composted animals would be considered "green" when used as road fill material. Director Lynch believed composted animals would be considered "green."
- 01:58:48 Sen. Shockley stated he has been reading about saving gasoline and that filled tires get better gas mileage. Director Lynch agreed and stated MDT is exploring the area.
- 01:59:44 Sen. Story asked whether MDT had obtained information from the little black boxes in state vehicles. Director Lynch stated the black boxes are difficult to get

at and are inaccessible under most circumstances. Director Lynch stated a computer analysis can provide the average fuel economy of a vehicle.

02:01:10 Sen. Story asked whether green products were more expensive. Ms. Olson responded some green products do cost more, but some cost less. Ms. Olson explained that the DOA advises agencies that if the cost for green products is within ten percent, green products should be chosen. Ms. Olson recognized that state agencies must operate within their budget.

(BREAK)

02:17:46 Chairman Wanzenried reconvened the meeting.

## **EQC/WATER POLICY JOINT SUBCOMMITTEE REPORT**

### **Report on Subcommittee Activities**

02:18:54 Mr. Everts provided a history on water policy development in Montana.

02:24:46 Sen. Story explained the Joint Subcommittee is concerned about how the duties would be divided between the EQC and the WPIC. Sen. Story explained the Joint Subcommittee approved a proposal to make the WPIC a permanent interim committee. The Joint Subcommittee also considered another proposal that would make the WPIC an EQC standing subcommittee. Sen. Story directed the EQC members to LC 5016 ([EXHIBIT 4](#)) and LC 5018 ([EXHIBIT 5](#)).

02:30:06 Rep. Lambert added both LC 5016 and LC 5018 would require the WPIC to coordinate its efforts with the EQC.

02:30:55 Sen. Jim Elliott, SD 7, is the Chairman of the WPIC. Sen. Elliott noted he did not regard the issue as a turf battle. Sen. Elliott stated the WPIC held approximately 160 hours of hearings. Sen. Elliott believed having an in-depth knowledge of water policy issues would be important in the future. Sen. Elliott identified the amount of time devoted to water and the opportunity for the DEQ and the DNRC to understand how to better serve the public as valid reasons to maintain a separate and permanent WPIC. Sen. Elliott stated Rep. McNutt also supported maintaining a separate WPIC. Sen. Elliott stated oversight of the agencies should remain with the EQC, and he believed a member of the EQC should sit on the WPIC. Chairman Elliott identified two considerations: (1) the importance of water to Montana; and (2) whether a subcommittee of the EQC could deal with the issue in depth.

02:36:14 Chairman Wanzenried provided a report and stated he voted against the bill draft. Chairman Wanzenried clarified the importance of water was not being questioned, but how to best develop and guide water policy. Chairman Wanzenried identified the question as whether it makes sense to address the issue in increments. Chairman Wanzenried believed LC 5018 would be the

better place to begin. Chairman Wanzenried recognized sensitivities between the EQC members and the WPIC members.

### Questions from the EQC

- 02:39:16 Ms. Conradi asked if the WPIC were to become a separate interim committee, whether public members would be permitted. Mr. Everts responded no. Ms. Conradi addressed Sen. Elliott and asked whether he thought it would be beneficial to have members of the public on the committee. Sen. Elliott replied he did not care one way or another whether members of the public sat on the WPIC, and that he was proud of the way the WPIC operated in a non-partisan manner and the amount of public comment that was heard. Ms. Conradi clarified she was not advocating for public membership, but was simply curious whether it would have been helpful to include non-legislative members. Sen. Elliott apologized for his assumptions.
- 02:43:03 Rep. Dickenson asked why one proposal would be preferable to the other in terms of carryover of knowledge. Sen. Elliott explained the WPIC expended a substantial amount of time studying water and that there were no other issues before the WPIC. Sen. Elliott believed a committee that addresses one subject can delve into the subject in greater depth. Sen. Elliott suggested there were more members on the WPIC than there might be on an EQC subcommittee. Chairman Wanzenried stated each proposal requires eight legislators, and agreed that one topic would allow more time. Chairman Wanzenried identified an interplay between the issue of water development policy and all other water-related issues. Chairman Wanzenried believed Montana could be faced with greater challenges if Montana continues to have abnormally low rainfall, increasing population, and increasing demands for water. Chairman Wanzenried stated he was less comfortable making the transition all at one time. Chairman Wanzenried saw a need to carefully examine how to make a division of duties. Chairman Wanzenried identified another issue as whether a subcommittee would have enough members, and suggested the size of the EQC could be expanded and could also provide an opportunity to include public members.
- 02:47:54 Rep. Witte questioned the 3-3 vote, when the WPIC has eight members. Chairman Wanzenried clarified the vote was taken at the Joint Subcommittee meeting, which has six members. Rep. Witte was troubled with the EQC term limits and the fact that a member can only serve three two-year terms on the EQC. Rep. Witte thought the term limits could be changed to allow four terms. Rep. Witte questioned the cost of the meetings and asked about the budget for the WPIC. Rep. Witte thought it might be more beneficial to have an EQC subcommittee. Mr. Everts clarified \$65,000 was appropriated for the WPIC.
- 02:51:56 Sen. Elliott explained the legislation provided \$50,000 to the WPIC, and an additional \$15,000 was requested from Legislative Council because of the requirements of HB 831. Chairman Elliott stated Rep. McNutt supported eliminating term limits for the EQC members. Rep. McNutt also believed adding additional time would put a strain on the membership of the EQC and could result in three-day meetings.

- 02:53:55 Rep. Witte asked Sen. Elliott about saving taxpayer money on meetings. Sen. Elliott stated taxpayer money could be saved now or later, and that the WPIC provides a benefit to the public by its decision making. Sen. Elliott believed it would be difficult to do a cost-benefit analysis of interim committees. Rep. Witte was convinced having the EQC subcommittee address Montana water issues would save money. Chairman Wanzenried recalled the split estates EQC subcommittee traveled.
- 02:56:46 Rep. Vincent suggested LC 5016 would provide for a typical interim committee meeting with a two-day structure. Rep. Vincent asked whether LC 5018 would add another day onto the regular meetings of the EQC. Chairman Wanzenried stated it would depend on the work plan.
- 02:57:49 Mr. Everts stated EQC has historically had between one and four subcommittees during an interim and, regardless of whether it is a subcommittee or interim committee, the Legislature would allocate funding as it sees fit.
- 02:59:00 Rep. Vincent commented that water policy is here to stay and that he has reviewed a substantial amount of information. Rep. Vincent did not believe LC 5018 would provide an adequate amount of time to address the issue.
- 03:00:42 Rep. Lambert pointed out the subcommittee could also meet via teleconference.  
03:01:43 Mr. Cebull served on the HB 790 Subcommittee and recalled the subcommittee traveled and heard substantial public comment and was a very effective model. Mr. Cebull requested comments from Rep. Lambert and Sen. Story on which proposal they would prefer.
- 03:03:29 Sen. Story viewed interim work as preparation for the Legislature. Sen. Story believed the more legislators involved in the interim process the better. However, Sen. Story was concerned about the division of workload. Sen. Story recalled both the DNRC staff and the DEQ staff appreciated the opportunity to discuss issues with the WPIC. Sen. Story wondered why those discussions did not happen before the EQC. Sen. Story believed the whole Legislature would need to decide the issue. Sen. Story commented most of the information he learned about tax law he learned on separate, single-issue interim committees.
- 03:08:36 Rep. Lambert stated her first choice was LC 5018 and adamantly believed results were more important than the costs. Rep. Lambert believed both bills should move forward.
- 03:09:47 Sen. Shockley stated the DEQ addresses environmental quality, and administratively, it would make more sense to create a subcommittee of the EQC.
- 03:11:08 Rep. Bixby also leaned toward creating a subcommittee of the EQC and explained the process followed by the HB 790 Subcommittee. Rep. Bixby believed the EQC was omitted from the water policy picture.

- 03:13:28 Sen. Elliott believed both bill drafts could move forward, but stated he would support creating a separate WPIC. Sen. Elliott asked how having a separate WPIC worked for the current EQC and asked the EQC members to consider what would have happened if they had to address water policy issues. Sen. Elliott asked that an EQC subcommittee have autonomy in choosing topics relating to water.
- 03:16:18 Rep. Vincent asked about the turnover on the WPIC and asked whether the turnover was a testament to the workload and the issues. Chairman Elliott agreed.

### **Public Comment**

There was no public comment offered.

### **Action by the EQC**

- 03:17:34 Sen. Shockley suggested sending both proposals forward.
- 03:18:17 Rep. Witte moved that LC 5018 be moved forward. Rep. Witte moved to amend LC 5018 on page 2, subsection (b), and that language similar to the language regarding the Agency Oversight Subcommittee be included, and that the subcommittee be comprised of six members, including public members. Chairman Wanzenried clarified there is no statutory language regarding the Agency Oversight Subcommittee. Chairman Wanzenried suggested leaving the subsection (b) out entirely and leaving the decision to the EQC based on the workload. Mr. Everts agreed the terms of the makeup of the subcommittee could be left to the discretion of the EQC. Chairman Wanzenried agreed there was a need for flexibility.
- 03:21:24 Sen. Story clarified the split estate subcommittee was defined in statute and required legislators from EQC, as well as non-legislative members. Sen. Story suggested LC 5018 was not necessary and a statute was not required to form an EQC subcommittee.
- 03:23:18 Sen. Shockley observed more bodies would be needed if another EQC subcommittee was created.
- 03:24:15 Rep. Dickenson suggested including language that would expand the membership on the EQC and address term limits for EQC membership.
- 03:25:36 Mr. Cebull recalled the requirements of HB 790 were addressed without increasing the size of the EQC.
- 03:26:11 Ms. Conradi envisioned a difference with the WPIC and the need for it to be ongoing, while the split estates subcommittee was only for one interim. Mr. Cebull suggested the HB 790 Subcommittee could be used as a model. Mr. Cebull asked if both proposals would have the same staffing requirements. Mr. Everts agreed.

03:28:38 Chairman Wanzenried introduced students from the PEAK program in the Helena School District.

## **FWP 2009 LEGISLATIVE PROPOSALS**

### **Statutory Changes Proposed by the Private Lands/Public Wildlife Council**

03:30:05 Bob Lane, Chief Legal Counsel, Department of Fish, Wildlife & Parks (FWP), reviewed "2009 FWP Legislative Proposals Under Consideration, August 25, 2008" (**EXHIBIT 6**). Mr. Lane explained proposal No. 9, Extend Legislative Short-Term Employee Status to FWP employees typically hired for summer work, and proposal No. 10, Amend Publication of Laws Requirement, as having been deleted from FWP's list of proposed legislation.

### **Questions from the EQC**

03:36:16 Sen. Shockley expressed concern about certain out-of-state people having an advantage for purchasing licenses. Sen. Shockley recalled there were constitutional issues with charging more for out-of-state hunters. Sen. Shockley was concerned about inviting litigation. Mr. Lane responded it is not a violation of the commerce clause to charge more or limit the number of licenses. Mr. Lane explained the proposal would open up more licenses to out-of-staters who used to be residents of Montana and still have relatives in Montana.

03:38:49 Mr. Pattison clarified that a former family member could be sponsored by his family remaining in state or whether anyone in Montana could be a sponsor. Mr. Lane clarified one qualification would be that they had a valid hunting license in the past, or they could be sponsored and hunting with a resident family member. Mr. Pattison wondered how the 1,000 combination licenses would be put out. Mr. Lane's understanding was that the licenses would be distributed by a drawing if there were more applicants than available licenses.

03:41:03 Sen. Kaufmann asked whether the total number of licenses would be increased. Mr. Lane stated the number would be increased to address increased numbers of game.

03:42:07 Mr. Cebull asked whether there was an acreage requirement for block management to receive a free license. Mr. Lane did not believe there was an acreage requirement, but people would have to qualify for block management. Mr. Cebull asked whether a landowner in the block management program could limit the type of animals harvested. Mr. Lane explained FWP does not allow limitations except for the number of hunter days. Mr. Cebull asked whether landowners have to obtain a special permit. Mr. Lane agreed landowners have to go through all the drawings.

03:44:52 Rep. Lambert clarified resident landowners belong to the block management program. Mr. Lane clarified both resident and non-resident landowners are in the block management program.



03:45:42 Sen. Shockley asked whether there was block management for birds only. Mr. Lane agreed.

03:46:01 Mr. Volesky believed FWP was not bringing the idea forward as a department proposal, but as a backup placeholder for the Private Lands/Public Wildlife (PL/PW) Council. Mr. Lane agreed.

### **Public Comment**

There was no public comment.

### **Stream Access and Fences at County Bridges**

03:47:38 Mr. Lane explained the objectives of proposal 2, Exhibit 6.

### **Questions from the EQC**

03:51:38 Sen. Shockley recalled SB 78 was a disaster and suggested any proposal should be drafted by legislative staff. Mr. Lane agreed and stated the group was intending to draft simple, straightforward legislation.

### **Public Comment**

03:53:29 Jay Bodner, Montana Stockgrowers' Association, thought there was value in looking at the upcoming court decision when drafting legislation. Mr. Bodner stated the Montana Stockgrowers' Association would continue to work on the legislation.

### **Questions from the EQC**

03:55:32 Mr. Volesky asked whether the stockgrowers would rather see the issue sorted out in the courts than with clear legislation. Mr. Bodner reiterated the stockgrowers would like to see the court decision to help with drafting legislation.

03:56:47 Mr. Lane added if the Legislature acts, there would be less for the courts to decide.

### **Hunting Access Enhancement Placeholder**

03:57:24 Mr. Lane explained the objectives of proposal 3, Exhibit 6.

### **Questions from the EQC**

03:59:42 Mr. Cebull appreciated the block management program and requested FWP to focus on the quality on the hunt, as well as the quantity of acres.

04:00:35 Sen. Story agreed the more that can be done to enhance access is good, but noted the FWP is limiting access to its lands to maintain quality. Sen. Story suggested landowners should have the same consideration.

### **Public Comment**

There was no public comment offered.

### **Mandatory Trapper Education**

04:01:54 Mr. Lane explained proposal No. 4, Exhibit 6.

### **Questions from the EQC**

There were no questions from the EQC.

### **Public Comment**

There was no public comment.

### **Revise Revocation of Privileged Statutes**

04:03:07 Mr. Lane explained proposal No. 5, Exhibit 6.

### **Questions from the EQC**

04:04:29 Sen. Shockley commented if a license is revoked, it is clear and, if a person hunts during that period of time, they are hunting without a license. Sen. Shockley stated those statutes already exist. Mr. Lane agreed but stated the statutes are not as clear as they need to be and could impede prosecution. Mr. Lane depicted the proposal as a clarification rather than a change.

04:05:45 Sen. Story commented the same issue existed with revoked drivers' licenses.

04:06:03 Mr. Pattison asked whether vandalism was part of criminal trespass. Mr. Lane explained the proposal was intended to cover private property where there is criminal trespass and a violation of hunting, fishing, or trapping laws.

### **Public Comment**

There was no public comment.

### **Authority to Revoke Fur Dealer Licenses**

04:07:12 Mr. Lane explained proposal 6, Exhibit 6.

### **Questions from the EQC**

04:08:49 Rep. Lambert wondered how a furrier would know whether the animal was obtained illegally. Mr. Lane responded the furrier would have to knowingly deal with illegal furs. If the furrier did not know, there would not have been a criminal violation.

### **Public Comment**

There was no public comment.

### **Authority for Archery Seasons for Mountain Lion, Wolf and Bear**

04:09:58 Mr. Lane explained proposal 7, Exhibit 6.

### **Questions from the EQC**

There were no questions from the EQC.

### **Public Comment**

There was no public comment.

### **Nonresident Antlerless Deer License Price Reduction**

04:11:25 Mr. Lane explained proposal 8, Exhibit 6.

### **Questions from the EQC**

04:13:17 Mr. Cebull wondered what the price was for a resident B license. Mr. Lane cited the price as \$10. Mr. Cebull wanted to know the prices for second and third licenses. Mr. Lane explained that second and third B licenses could be set at a lower price to entice hunters and reduce herd levels.

04:14:31 Sen. Kaufmann asked whether everyone who gets a reduced license would have paid \$75 for the first license. Mr. Lane stated that was currently the case, but FWP would like to create a situation where the \$75 for the first license could be reduced to recruit more hunters. Sen. Kaufmann wondered if there could be two hunters out on the same day where one hunter paid \$75 and the other hunter paid \$35. Mr. Lane stated the licenses would be issued by hunting district.

### **Public Comment**

There was no public comment.

### **Questions from the Council**

04:16:29 Rep. Lambert asked if any of the proposals were planned in an effort to give either FWP the money to purchase more land or cost more taxpayer dollars. Mr. Lane responded no.

04:19:23 Sen. Shockley moved that FWP's proposals be approved for the purpose of pre-introduction.

04:19:39 Sen. Story commented on voting for placeholders in September for something that may or may not happen. Senator Shockley's motion carried by voice vote with Sen. Story, Sen. Lambert, Mr. Pattison, and Rep. Vincent voting no.

(LUNCH)

05:15:41 Chairman Wanzon reconvened the meeting.

### **PUBLIC COMMENT ON ANY MATTER NOT CONTAINED IN THIS AGENDA AND THAT IS WITHIN THE JURISDICTION OF THE EQC**

There was no public comment offered.

### **EQC/LFC JOINT PETRO-FUND SUBCOMMITTEE REPORT**

#### **Overview of Report**

05:16:31 Hope Stockwell, Legislative Research Analyst, staffed the Petroleum Tank Release Fund Subcommittee. Ms. Stockwell stated the Petroleum Tank Release Fund Subcommittee did not propose any legislation, but is seeking EQC's approval of its final report ([EXHIBIT 7](#)). Ms. Stockwell noted changes in the report.

05:23:29 Mr. Livers apologized for the lateness of the information. Mr. Livers submitted and reviewed "Legislative Proposals Proposed by the Petroleum Tank Release Compensation Board (the Board) and Presented by the Department of Environmental Quality for the Environmental Quality Council's September 2008 Meeting" ([EXHIBIT 8](#)).

05:30:37 Terry Wadsworth, Executive Director, Petroleum Tank Release Compensation Board, expressed his desire to include an increased co-pay in any proposed legislation. Mr. Wadsworth explained how the proposed legislation was a result of the 2003 legislative audit.

#### **Public Comment**

05:31:42 Ronna Alexander, Petroleum Marketers Convenience Store Association, stated her association supports the proposals. Ms. Alexander acknowledged the lack of support to increase the fund or cut administrative expenses and asked the EQC to consider writing a letter to the DEQ outlining the EQC's concerns and recommendations. Ms. Alexander explained her concerns with Guidance Document No. 7. Ms. Alexander believed the DEQ should balance its work assignments based on available funding.

#### **Questions from the EQC**

05:36:06 Rep. Dickenson asked Mr. Livers about the controls on fund balance and recalled the fee was .75 of one cent. Mr. Livers agreed there was a typographical error.

- 05:37:12 Rep. Dickenson addressed the insurance incentive and recalled concern that a third-party was always needed to get insurance companies to pay. Rep. Dickenson asked whether the incentive took that into account. Mr. Wadsworth believed the incentive did address the potential for litigation. Rep. Dickenson asked whether the incentive would alleviate the problem of insurance companies not being willing to accept responsibility. Mr. Wadsworth believed it would help and stated if the insurance company will pay up front, the payment would be offset against the co-pay.
- 05:39:39 Sen. Story recalled the insurance issue was sticky and recalled one owner testifying he would not turn in a claim since his premium price would increase. Mr. Wadsworth thought the proposal would encourage owners/operators to obtain insurance. Sen. Story asked about the statute of limitations issue. Mr. Wadsworth admitted the Board struggled with the issue and stated the Board is attempting to bring the issue to the attention of the Legislature, so the Legislature will understand the challenges the Board is struggling with.
- 05:43:32 Chairman Wanzon asked whether the proposal would remedy the Petroleum Tank Release Fund's problems, and Mr. Livers stated the proposal would help marginally, but identified the real issues as fund solvency and restructuring.
- 05:44:39 Mr. Wadsworth agreed with Mr. Livers.
- 05:45:12 Rep. Dickenson asked whether it would be helpful if the ceiling of \$8 million were raised. Mr. Wadsworth thought Rep. Dickenson was headed in the right direction and raising the ceiling would provide more time to maneuver.
- 05:47:44 Mr. Pattison requested clarification from Mr. Wadsworth on whether the legislation reflected recommended actions that came from the audit. Mr. Wadsworth agreed the proposal is focused on meeting the intent of the 2003 legislative audit.
- 05:48:55 Sen. Story asked Mr. Livers to defend Technical Guidance Document DEQ-7. Mr. Livers identified a need to revisit the issue. Sen. Story commented it would not make sense for the DEQ to make practical decisions based on thought processes that have not been through the rulemaking process. Mr. Livers agreed Sen. Story's point was fair.
- 05:51:23 Sandi Olsen explained the DEQ had done two rulemakings that affect the clean up standards for tank cleanups. Ms. Olsen explained the adoption of Risk Based Corrective Action (RBCA) standards which look at some contaminants that are not identified in DEQ-7. Both rulemakings followed rulemaking standards. DEQ-7 was intended to be a recap of the two rules. Ms. Olsen stated the DEQ intends to pursue more opportunity for public comment and discussion.
- 05:52:49 Sen. Story recalled that in the past, sites were being cleaned up to drinking water standards and are now being cleaned up above drinking water standards. Sen. Story was curious where the DEQ wanted to be on sites. Ms. Olsen responded

the DEQ is attempting to close more efficiently and effectively and all standards are based on health risks.

- 05:56:14 Rep. French wondered whether the guidance document could be legally used if it had not become part of the DEQ's administrative rules. Ms. Olsen explained the DEQ-7 was intended to be used only as a communication tool, not as an enforcement tool.
- 05:57:19 Sen. Story commented that he has always believed there were two different groups with two different responsibilities and wondered if it would be better to unify the program under the DEQ. Mr. Wadsworth believed the proper checks and balances were in place and that significant communication occurred between the DEQ and the Board.
- 06:00:03 Chairman Wanzon asked whether the EQC should allow the proposals to proceed.
- 06:00:17 Sen. Story moved to authorize staff to draft a bill that encompasses the six topics in Exhibit 8 for the purposes of pre-introduction. The motion carried unanimously by voice vote.
- 06:01:06 Rep. French moved to adopt the report. The motion carried unanimously by voice vote.

#### **HJR 57 CONSERVATION EASEMENT/TRUST LAND REPORT**

- 06:01:49 Mr. Kolman presented and reviewed "Trust Land Management" ([EXHIBIT 9](#)).
- 06:02:55 Rep. Lambert moved the EQC adopt the Trust Land Management report. The motion carried unanimously by voice vote.

#### **LC0274 - CONTINGENT VOIDNESS CLEANUP LEGISLATION**

##### **Update - DEQ Staff**

- 06:03:30 Mr. Everts submitted a copy of Section 30 and Section 6, Montana Session Laws 2005, regarding contingency voidness ([EXHIBIT 10](#)). Mr. Everts also submitted LC0274 ([EXHIBIT 11](#)).

##### **Questions from the EQC**

- 06:07:33 Ms. Conradi wondered how the need for the contingency voidness was identified. Mr. Everts explained they were notified during the interim that the Secretary of the Interior had approved the changes, so Mr. Petesch requested Mr. Everts to bring the issue before the EQC since the EQC has policy oversight.
- 06:08:36 Rep. Lambert asked if the bill changed any laws or whether it simply addressed contingency voidness. Mr. Everts agreed the bill addressed contingency voidness.

- 06:09:01 Sen. Kaufmann stated these are two contingencies contained in the code and asked whether it would make sense to search for other contingencies throughout the entire code.
- 06:10:01 Rep. Dickenson moved LC0274 be approved for drafting. Rep. Lambert stated she would sponsor the bill, depending on the election outcome.

#### **UPDATE ON THE KALISPELL POLE & TIMBER, RELIANCE REFINERY, AND YALE OIL CORPORATION (KRY) SITE CLEANUP PROCESS**

- 06:11:13 Richard Opper, Director, DEQ, stated the DEQ completed its Record of Decision (ROD) last June for the KRY site. Director Opper explained the DEQ is fully supportive of the City of Kalispell's plans for the site. Director Opper identified impending litigation as being responsible for slowing down the clean up process. Director Opper stated settlement negotiations with the Burlington Northern Santa Fe Railway Company (BNSF) have not occurred. Director Opper explained the DEQ had settled with the other potentially responsible parties (PRP), except BNSF. Additionally, BNSF is challenging the clean up plan. Director Opper referred to a Resolution from the Kalispell Chamber of Commerce regarding the KRY site ([EXHIBIT 12](#)). Director Opper disagreed that the DEQ is responsible for the holdup on cleaning up the KRY site.

#### **Public Comment**

- 06:18:06 Leo Berry, an attorney who represents BNSF, explained the DEQ sued BNSF and the other PRPs in 2004, and that the litigation has been pending for four years. Therefore, Mr. Berry depicted Director Opper's perspective as unique. Mr. Berry identified the issue as the state's liability for the Reliance Refinery site. Following the issuance of the ROD, BNSF appealed the ROD, but the lawsuit, to date, has not been served and officially engaged. Additionally, Mr. Berry stated BNSF attempted to remediate the site and did not forestall remediation attempts. Mr. Berry emphasized that BNSF's consultants have advised BNSF that the proper cleanup of the KRY site could be accomplished for substantially less money.

#### **Questions from the EQC**

- 06:22:13 Rep. Witte thanked the EQC for hearing information regarding cleanup of the site. Rep. Witte recalled Director Opper's comment that BNSF will not do any work on the project. Mr. Berry explained that the BNSF has expended close to \$3 million in remediation at the site. Mr. Berry clarified the BNSF did not actually conduct any of the operations or contaminate the site, but leased to a company that contaminated the property and then went out of business. Mr. Berry emphasized the Reliance Refinery site is state-owned property. Rep. Witte asked whether the state had put any money into its share of the cleanup. Mr. Berry did not know of any clean up activity, and deferred the question to the state. Director Opper admitted he misspoke and clarified that BNSF was the only liable party that has not settled on the percentage of liability.

- 06:26:13 Ms. Olsen stated an agreement has been reached with the DNRC, and the DNRC is paying 27.5 percent of the cost on the ongoing work at the site.
- 06:27:04 Rep. Witte also recalled the DEQ requested settlement negotiations. Mr. Berry responded negotiations usually include give and take on each side and settlement was unsuccessful. Mr. Berry clarified the allocation may be fair, but the settlement included an allocation to BNSF of 70.5 percent of "X." Mr. Berry cautioned his client against agreeing to a percentage of "X."
- 06:29:35 Rep. Witte asked for the dollar amount liability assigned to Mr. Schwank. Mr. Berry did not have an exact number. Rep. Witte recalled \$8 million was allocated to Mr. Schwank. Rep. Witte believed the KRY cleanup should get started.
- 06:30:59 Sen. Shockley addressed Mr. Berry and stated the only alternative for the DEQ is to take the issue to court. Mr. Berry clarified the DEQ sued BNSF well in advance. The BNSF is challenging the clean up plan adopted by the DEQ. Sen. Shockley recalled the BNSF denied liability and then disputed the degree of liability. Mr. Berry believed litigation was not necessary. Sen. Shockley suggested the BNSF would not have complied with another order. Mr. Berry noted the complexity of the site and stated the BNSF did not dispute its liability and stated there are issues as to who is liable for what. Mr. Berry did not believe the parties were at an impasse when the lawsuit was filed.
- 06:34:16 Rep. Lambert asked Rep. Witte what type of action he expected from the EQC. Rep. Witte stated he had hoped to bring two groups together to resolve the issue.
- 06:35:14 Rep. Dickenson addressed Mr. Berry and stated she was concerned about the letter stating the BNSF is willing to help financially with the relocation of the two businesses. Mr. Berry believed the site presented a very unique opportunity for a win/win situation. Mr. Berry used the Old Works Golf Course in Anaconda as an example of what can be accomplished while still protecting public health and the environment. Mr. Berry explained how the BNSF would have supported the adoption of a reasonable plan.
- 06:39:32 Rep. Dickenson asked what BNSF had offered to do to help businesses move to the site. Mr. Berry stated the businesses are perfectly comfortable where they are but would like to be made whole and have a move that would not cost them anything. BNSF offered to cost share with the City of Kalispell for an amount up to \$1 million to move the facilities.
- 06:41:09 Rep. French stated the plan is for BNSF to provide \$1 million, and Rep. French wondered who would be responsible to cap off the area. Mr. Berry stated the BNSF would be responsible for implementing whatever remediation plan is chosen. Mr. Berry stated the City wants the businesses to relocate out of the downtown area, and the businesses would be willing to move.
- 06:42:46 Rep. French recalled testimony from a woman whose elderly father was being hounded by the DEQ to clean up a spill. Director Opper agreed and explained the state is in the same position in that it did not contaminate the site, but was the



owner at the time. Rep. French asked whether originally the cleanup was at \$8 million and now the cost is \$33 million. Director Opper denied that a number was ever given for the cleanup. Rep. French requested an estimate for the cleanup and Director Opper responded \$32 million.

- 06:45:59 Ms. Conradi addressed Director Opper and asked whether the site contamination was situated so one party could clean up its portion. Director Opper explained the site contains co-mingled contaminates. Ms. Conradi asked whether it would be geographically possible to clean up a portion of the site. Director Opper responded portions could be cleaned up and those portions could be addressed first. Ms. Conradi wondered if the responsibility for cleaning up one portion of the site would rest with one party.
- 06:48:40 Ms. Olsen stated many of the contaminates at the site are co-mingled, and there is no practical way to clean up one part. The statute holds all PRPs to be strict and jointly and severally liable.
- 06:50:15 Sen. Story was puzzled and asked what would happen if the BNSF was not liable for 70 percent of the liability. Director Opper explained when someone's liability is reduced, other parties' liabilities will increase.
- 06:51:31 Cindy Brooks, DEQ, stated the settlement agreements with the other parties do not provide for a reopener should it be determined that the BNSF's liability should be reduced.
- 06:52:42 Rep. Witte asked Ms. Brooks about other cleanup amounts. Ms. Brooks stated she attended all of the settlement negotiations with Mr. Schwank and recalled the DEQ told Mr. Schwank he could not have a number until after the feasibility study was completed. Mr. Schwank was also told cleanup for similar sites typically cost between \$10 million - \$60 million. Ms. Brooks stated the DEQ was explicit it could not provide a definite number. Ms. Brooks stated in 1998, the BNSF had an expert report indicating cleanup of just the BNSF property would be \$21.5 million.
- 06:54:51 Rep. Witte asked why the DEQ does not own the property. Ms. Brooks explained the DEQ is not a property management agency.
- 06:55:57 Sen. Story asked if the DEQ were to start cleanup today, how many years would it take. Director Opper could not provide a time line, but thought the process could be expedited.

## **ADDITIONAL COUNCIL DISCUSSION AND ACTION ON THE CLIMATE CHANGE**

### **LC 6004**

- 06:58:13 Ms. Stockwell explained the proposed tax abatement for use of locally grown foods in Montana. Ms. Stockwell reported she spoke with the Department of Revenue (DOR), and the proposal would violate the Commerce Clause of the U.S. Constitution. One alternative would be a grant program tailored to assist a facility that was using locally grown foods. Ms. Stockwell stated no alternatives

were drafted because of the issues with the Commerce Clause. Ms. Stockwell recommended the EQC not proceed with LC 6004.

07:02:33 Rep. Dickenson recalled the proposal got substantial public support and asked that the record reflect the EQC's support of the concept.

07:03:22 Sen. Story summarized the issue as how to add value to existing production facilities.

### **LC 6008**

07:04:35 Ms. Nowakowski recalled the EQC's discussion about the difference between setting the limit as 150 percent of poverty level or setting the limit at exact amounts. Ms. Nowakowski submitted "Energy Related Tax Relief" (**EXHIBIT 13**).

07:06:05 Sen. Story recalled the bill had Montana adjusted gross income, which is less than actual gross income. Director Bucks, DOR, stated the amount is close to gross income, but there are some exclusions. Adjusted gross income is generally considered to be a fair and broad measure of a person's ability to pay and income level. Sen. Story asked whether adjusted gross income would be easier to administer or whether it would be better to tie the income to 150 percent of the poverty level. Director Bucks responded picking a dollar level of adjusted gross income is simpler for the DOR to administer and simpler for taxpayers to understand. The DOR recommended setting an exact dollar number rather than a set level of the federal poverty level. Sen. Story noted the federal poverty level can be adjusted in Washington D.C. and wondered how that would relate to the constitutional duty to tax. Director Bucks agreed it would raise that issue as well.

07:10:54 Sen. Story addressed household income versus individual income and wondered whether considering household income would be more complicated. Director Bucks explained the elderly homeowner and renter credit, which has one advantage because it includes pension income.

07:13:12 Sen. Story moved to amend the bill to base the number on household income and set the levels at levels similar to those contained in the elderly homeowner and renter income credit. The motion carried unanimously by voice vote.

07:14:00 Rep. Kaufmann moved that LC 6008 be moved forward, as amended, for purposes of pre-introduction. The motion carried with Senator McGee and Mr. Cebull voting no. Sen. Kaufmann agreed to carry the bill.

### **EQC/WATER POLICY JOINT SUBCOMMITTEE REPORT (Cont'd.)**

07:15:26 Mr. Kolman submitted and explained LC 7000, LC 7001, and LC 7002 (**EXHIBIT 14**), (**EXHIBIT 15**), (**EXHIBIT 16**).

07:19:06 Rep. Vincent requested a breakdown of the six members at large chosen by the EQC for the HB 790 Subcommittee. Mr. Kolman explained there was a public call for participants. The six EQC subcommittee members made recommendations

for the at-large members, and the EQC appointed two additional legislators as non-voting members.

- 07:22:00 Sen. Story questioned whether LC 7001 should require 21 members. Sen. Story was concerned about the administration of a committee that large.
- 07:23:49 Rep. Lambert asked for Rep. Dickenson's rationale for increasing the EQC membership. Rep. Dickenson explained membership should be increased to share the workload. Rep. Dickenson agreed with Sen. Story that 21 members could be unmanageable.
- 07:24:59 Sen. Shockley was also concerned about increasing the membership of the EQC, and stated he would like the subcommittee to have members of the public with expertise. Sen. Shockley suggested some of the people on the subcommittee would not be part of the EQC.
- 07:26:05 Ms. Conradi recalled Sen. Story had suggested the EQC should be larger. Sen. Story suggested expanding a committee too much could result in conflicts.
- 07:27:48 Mr. Everts stated the proposal contains two concepts, which do not have to be linked. Mr. Everts stated EQC membership would not have to be increased, and the subcommittee could contain members that are not part of the whole EQC.
- 07:28:37 Mr. Kolman stated LC 7002 removed public members from the subcommittee.
- 07:29:22 Rep. Witte suggested amending LC 7001 to increase subcommittee membership from six to seven, which would put the EQC's membership at 19.
- 07:29:57 Rep. Witte moved to amend LC 7001 and increase EQC membership from six to seven Senators and six to seven Representatives.
- 07:30:33 Sen. Kaufmann cited difficulties in the appointment process because of the resulting imbalance in parties. Sen. Kaufmann made a substitute motion to keep EQC membership the same, eliminate term limits, and retain the EQC membership as outlined on page 3.
- 07:31:58 Rep. Witte moved LC 7001 with an amendment to retain six members of the Senate and six members of the House. The motion carried unanimously by voice vote.

#### **LC 5016**

- 07:33:02 Sen. Story moved to advance LC 5016.
- 07:33:48 Mr. Everts clarified the EQC would be adopting LC 5016 as an EQC bill for pre-introduction purposes.
- 07:34:25 Sen. Shockley commented he did not see a need for two competing bills.

- 07:35:00 Mr. Everts suggested the title would need to be broadened.
- 07:35:48 Sen. Kaufmann thought there were good arguments for both ways to address the issue and that it would be good to provide two potential solutions.
- 07:37:31 Sen. Story's motion to advance LC 5016 carried by roll call vote.

## **OTHER BUSINESS**

### **Assignment of EQC Bill Sponsors**

- 07:39:30 Chairman Wanzenried requested EQC members who voted in favor of a proposal to consider sponsoring the bill.
- 07:40:25 Rep. French offered to sponsor LC 6006.
- 07:40:44 Chairman Wanzenried offered to sponsor LC 6011.
- 07:41:14 Rep. French offered to sponsor LC 6009.
- 07:42:02 Chairman Wanzenried requested volunteers to sponsor EQC's proposed legislation, and asked members to e-mail staff.
- 07:42:33 Mr. Everts commented that he appreciated the work of the EQC members and their good humor.
- 07:44:06 MEETING ADJOURNED.