



# ENVIRONMENTAL QUALITY COUNCIL

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**GOVERNOR BRIAN SCHWEITZER**  
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SUE DICKENSON  
JULIE FRENCH  
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CARY SMITH  
FRANKE WILMER

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JIM KEANE  
RICK RIPLEY  
JIM SHOCKLEY  
MITCH TROPILA  
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BRIAN CEBULL  
DIANE CONRADI  
MARY FITZPATRICK

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

## MINUTES

Approved May 6, 2010

March 5, 2010

Room 172  
State Capitol Building

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 Meeting Audio. Note: You must have Real Player to listen to the audio recording.

### **COMMITTEE MEMBERS PRESENT**

REP. CHAS VINCENT, Chair  
SEN. BRADLEY MAXON HAMLETT, Vice Chair  
SEN. JIM KEANE  
SEN. RICK RIPLEY  
SEN. MITCH TROPILA  
SEN. BRUCE TUTVEDT  
REP. SUE DICKENSON  
REP. JULIE FRENCH  
REP. MIKE MILBURN  
REP. CARY SMITH  
REP. FRANKE WILMER  
MS. MARY FITZPATRICK  
MR. MIKE VOLESKY

### **COMMITTEE MEMBERS EXCUSED**

SEN. JIM SHOCKLEY  
MR. BRIAN CEBULL  
MS. DIANE CONRADI  
MR. JEFF PATTISON

## **STAFF PRESENT**

JOE KOLMAN, Research Analyst  
LEANNE KURTZ, Research Analyst  
SONJA NOWAKOWSKI, Research Analyst  
BARBARA SMITH, Fiscal Analyst  
HOPE STOCKWELL, Research Analyst  
CYNTHIA PETERSON, Secretary  
TODD EVERTS, Legislative Environmental Analyst

## **Visitors**

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

## **COMMITTEE ACTION**

- The EQC adopted option (b) of the first study task, and options (a) of the second, third, fourth, and fifth study tasks on the SJ 28 Recycling Worksheet, without the recommendations.
- The EQC also voted to address options (b) and (c) under rural recycling challenges, on the SJ 28 Recycling Worksheet.

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

00:00:01 Rep. Chas Vincent, Chairman of the Environmental Quality Council (EQC), called the meeting to order at 8:00 a.m. The secretary called roll ([Attachment 3](#)).

## **AGENDA**

### **Rule Review --**

#### **General overview, Mr. Everts**

00:02:15 Mr. Everts reviewed the current administrative rules update ([Exhibit 1](#)). Mr. Everts also submitted the Comprehensive Environmental Cleanup & Responsibility Act (CECRA) Rulemaking Economic Impact Statement (EIS) ([Exhibit 2](#)). Mr. Everts explained the process if the EQC deems an EIS is insufficient. Mr. Everts requested the EQC to make a determination whether the EIS, Exhibit 2, is sufficient.

## **CECRA: DEQ**

- response to EQC letter**
- update on working group status**
- review of CECRA rulemaking economic impact statement**

00:07:28 Richard Opper, Director, Department of Environmental Quality (DEQ), commented on the EQC's letter regarding the Comprehensive Environmental Cleanup and Responsibility Act (CECRA) rules (**Exhibit 3**). Director Opper explained the DEQ had met with the stakeholders, and that he believed the stakeholders were more comfortable with DEQ's intentions. Director Opper also explained the EIS was undertaken because of the results of a 2008 audit and at the request of approximately 15 legislators. Director Opper spoke about the difficulties of constructing the EIS.

### **Public comment**

00:17:22 Steve Wade, Burlington Northern and Santa Fe Railway Company (BNSF), commented the parties are working towards a resolution, but he has not seen any of the rule changes. Mr. Wade thought it was premature to decide whether the EIS is sufficient.

00:18:36 Don Allen, Western Environmental Trade Association, believed the DEQ is doing the right thing by involving the stakeholders but cautioned that the stakeholders have questions. Mr. Allen hoped the questions would be answered at the stakeholders' meeting scheduled for March 17, 2010.

### **Questions & discussion -- EQC**

00:21:42 Sen. Keane acknowledged the difficulty of developing an EIS with dollars and stated the EIS was not what he was looking for. Director Opper stated qualitatively he thought the EIS did a good job of putting the processes in rules, and that he would not be able to include specific dollar amounts. Sen. Keane clarified that he was seeking to know what the cost would be to the public. Sen. Keane wanted to know why the rulemaking was being undertaken. Director Opper explained the rules were in response to the 2008 audit, and the DEQ's motive was to provide more clarity and transparency to the process.

00:26:26 Rep. Dickenson was glad the DEQ was working with the stakeholders and asked whether there was a possibility of expanding the working group. Director Opper agreed the makeup of the working group could be expanded, but cautioned it would complicate the process. Rep. Dickenson agreed expanding the group could delay the process. Rep. Dickenson asked whether the purpose of the rulemaking was to provide a framework to enforce the superfund law. Director Opper stated the most frequent criticism the DEQ receives relates to the lack of clarity in enforcement.

- 00:30:53 Sen. Tutvedt was concerned with the use of the phrase "the DEQ could modify" and noted the word "could" did not lead to clarity. Director Opper thought the amendments would provide clarity. Sen. Tutvedt was concerned with the lack of predictability. Director Opper explained the rules should not lead to additional costs to the liable parties. Sen. Tutvedt asked Mr. Everts whether the EQC would have an opportunity to see the amended EIS.
- 00:33:49 Mr. Everts stated the EQC would have a chance to see the changes and that he would track the rules, and the EQC could discuss the rules via conference call. Mr. Everts stated the EQC would need to decide whether the EIS is sufficient.
- 00:34:41 Sen. Tutvedt commented the EIS is troubling because there are no numbers. Sen. Tutvedt asked to see numbers. Director Opper disagreed with Sen. Tutvedt's assessment.
- 00:36:50 Sen. Keane asked whether the State of Montana is a polluter. Director Opper agreed that the State is a liable party on some sites.
- 00:37:26 Chairman Vincent suggested waiting until after the stakeholders' meeting and addressing the issue in May. Sen. Tutvedt requested a conference call. Director Opper noted the April 19 deadline for the rules. The EQC agreed it would hold a conference call, if necessary.
- 00:38:56 Mr. Everts clarified the fact that he missed the EIS and the delay in its release was not due to any fault of the DEQ.

## **AGENCY OVERSIGHT: DEQ -- SB 97 PETROLEUM TANK RELEASE FUND**

### **Overview of Fund's Financial Status -- Ms. Stockwell**

- 00:39:30 Hope Stockwell, Research Analyst, submitted and reviewed "Petroleum Tank Release Fund Status, March 2010 ([Exhibit 4](#)).

### **Public comment**

- 00:42:08 Ronna Alexander, Montana Petroleum Marketers' Montana Retailers' Association, addressed the proposed amendments to the DEQ's rules for screening for contaminants at petroleum release sites. Ms. Alexander requested the EQC recommend the DEQ take more time and allow more public comment on the proposed rules.
- 00:46:42 Terry Wadsworth, Executive Director, Petroleum Tank Release Board, stated he would be available for questions.

### **Questions & discussion -- EQC**

- 00:47:06 Sen. Keane disclosed he is an affected party since he owns property in Butte with an underground petroleum tank.

- 00:48:18 Sen. Keane asked why the rules were being changed. Sandi Olsen, Remediation Division, DEQ, responded the rules are being changed in an effort to make it easier to close sites. Ms. Olsen submitted a copy of the *Montana Underground Storage Tank Program* newsletter ([Exhibit 5](#)).
- 00:53:56 Sen. Keane expressed his concern about the increased costs and wondered who would be responsible for paying for testing and analysis. Sen. Keane was concerned the program is analyzing sites rather than cleaning the sites. Ms. Olsen clarified metals testing has always been in the guide and vapor intrusion is a developing field. Ms. Olsen stated testing would only be done when something concrete occurs that triggers the necessity for testing.
- 00:57:53 Sen. Tropila asked Mr. Wadsworth about the graph and stated he was glad claims on the shelf had decreased and asked for confirmation that the claims on the shelf number had not been moved to the pending non-obligated work category. Mr. Wadsworth stated the number is a function of how much work is being done, and pending non-obligated work consists of low-priority work.
- 01:00:41 Sen. Keane asked whether the EQC could look at the rule at its May meeting. Mr. Everts agreed.
- 01:01:04 Sen. Keane asked Ms. Alexander whether she had worked with the DEQ on the rulemaking. Ms. Alexander responded that at this point she had not worked with the DEQ on the rule changes.
- 01:01:26 Sen. Keane asked Ms. Olsen whether she would be working on the rule with Ms. Alexander. Ms. Olsen agreed. Ms. Olsen submitted a list of constituents that changed with the rule ([Exhibit 6](#)).
- 01:02:13 Chairman Vincent asked why there was a one-week opening for public comment. Ms. Olsen clarified the public comment period was 30 days; however, the public hearing was held three weeks into the comment period.

## **AGENCY OVERSIGHT: DEQ -- COMPLIANCE & ENFORCEMENT REPORT**

### **Introduction – Mr. Everts**

- 01:03:05 Mr. Everts directed the EQC to the "Report to the Montana Environmental Quality Council, Environmental Enforcement and Compliance, FY 2008 - FY 2009" ([Exhibit 7](#)).

### **Overview – DEQ**

- 01:05:42 Judy Hanson, Permitting Division, DEQ, addressed Exhibit 7 and explained DEQ's permitting and compliance processes.
- 01:10:39 John Arrigo, Enforcement Division, DEQ, provided a history of the Enforcement and Compliance Division, which was created in the 1990s. Mr. Arrigo explained

the requirements of the reporting law and how penalties are assessed and collected.

### **Public comment**

There was no public comment.

### **Questions & discussion -- EQC**

- 01:16:36 Rep. Dickenson asked Mr. Arrigo about assessing whether an entity can afford a penalty and, if a penalty is suspended, whether anything is done as far as corrective action. Mr. Arrigo stated how public notice is required when there is a violation, such as failure to monitor.
- 01:20:51 Rep. Dickenson addressed David Klemp, Air Quality, DEQ, about the refinery in Great Falls and the practice of flaring to burn off gases. Rep. Dickenson had observed flaring events were occurring more often. Rep. Dickenson wondered whether new equipment or repair of existing equipment could reduce the need for flaring. Rep. Dickenson stated she was concerned about public health. Mr. Klemp responded the DEQ is working closely with the refinery to ensure compliance. Mr. Klemp explained the Environmental Protection Agency's (EPA) requirements and that enforcement may not be a deterrent or a remedy. Rep. Dickenson asked again about the health risks associated with the practice of flaring. Mr. Klemp agreed there had been an increase in flaring events at the Great Falls facility and explained flaring is not as unhealthy as not flaring. Mr. Klemp explained the DEQ works closely with the EPA and the Great Falls facility to attain compliance. Rep. Dickenson wanted to know about the specific public health risks associated with flaring. Mr. Klemp stated it was more healthy to flare the gases than to vent the gases.
- 01:26:48 Sen. Tutvedt addressed enforcement and asked whether there was a mediation involved in assessing a penalty. Mr. Arrigo explained the process for assessing penalties and pursuing settlement.
- 01:30:24 Sen. Keane addressed Director Opper and inquired how much of the collected fines are allocated to the general fund and how much are allocated to other programs. Mr. Opper could not readily answer, but agreed to provide the information.
- 01:31:55 Sen. Tutvedt asked about the expense of creating the report and wondered how much the report is used. Director Opper estimated the report took 100 hours of staff time, and the report is specifically produced for the EQC. Director Opper deferred the question to the EQC on how often report is used. Sen. Tutvedt wondered whether there is a more efficient use of resources.
- 01:33:31 Rep. Milburn stated he would favor a shorter summary.
- 01:33:56 Sen. Hamlett asked Mr. Arrigo whether the state's economic situation would result in less wiggle room for people with compliance and an increase in the

number and amount of fines. Mr. Arrigo predicted the economy would result in fewer subdivision applications, fewer gravel pit applications, and fewer violations. Mr. Arrigo suggested that, overall, the amount of enforcement would not go down.

01:37:34 Ms. Hanson addressed permitting, compliance, and enforcement and stated compliance would suffer with a tighter budget.

## **AGENCY OVERSIGHT: DEQ -- OPENCUT MINING PROGRAM**

### **Introduction – Mr. Kolman**

01:38:39 Joe Kolman, Research Analyst, explained changes in the law as a result of HB 678.

### **Judy Hanson, DEQ**

01:41:44 Judy Hanson, Permitting and Compliance Division, DEQ, explained the program changes and stated she believed the DEQ had done an excellent job implementing the changes required by HB 678.

### **Public comment**

01:45:56 Cary Hegreberg, Montana Contractors' Association, supported HB 678. Mr. Hegreberg credited the DEQ staff for their good work. Mr. Hegreberg believed the bond release issue should be addressed.

### **Questions & discussion -- EQC**

01:50:18 Rep. Milburn thanked Ms. Hanson for reporting on implementation of HB 678. Rep. Milburn asked whether the process could be better streamlined and more efficient and whether the process is routinely evaluated. Ms. Hanson explained the processes are routinely reviewed and modified to become more efficient.

01:54:00 Rep. Wilmer remarked she communicates with the Gateway Open Cut Mining Action Group, which is concerned about open pit mining permits. Rep. Wilmer noted the air-quality review data for Gallatin County on the DEQ website only goes through 2006. Rep. Wilmer wondered when the additional data would be available. Director Opper clarified the website would be updated as soon as possible. Director Opper stated the controversy about gravel pits had not been eliminated and that the issue takes substantial DEQ staff resources.

01:56:21 Sen. Ripley was excited to learn the backlog of applications was being addressed and wondered whether the DEQ would be caught up in the next six months. Ms. Hanson clarified two-thirds of the backlog are left to be processed. Ms. Hanson identified new applications as a competing factor with clearing the backlog. Ms. Hanson could not commit to a precise length of time. Sen. Ripley acknowledged there are variables but stated he was looking for a rough ballpark figure. Ms. Hanson predicted it would take longer than one year. Sen. Ripley

wanted to know what factors are considered when prioritizing applications. Sen. Ripley wondered whether the prioritized list is available to the applicants.

- 02:00:23 Christopher Cronin, Open Cut Mining Program Supervisor, stated 300 projects were in the backlog and explained the process used to clear the backlog. Mr. Cronin stated recent information indicated approximately one-half of the backlogged applications had been addressed.
- 02:07:10 Upon inquiry from Sen. Ripley, Director Opper explained efforts to prioritize the list and assured Sen. Ripley that input is sought from the counties and the Montana Contractors' Association.
- 02:07:51 Sen. Tutvedt disclosed he owns several gravel pits. Sen. Tutvedt asked whether jobs were not filled on high-priority projects. Ms. Hanson assumed there were some stimulus projects on the list, and that the timeframe had been met on those projects. Sen. Tutvedt believed the prioritization process is working. Sen. Tutvedt commented on the unnecessary information required in the application process. Ms. Hanson agreed there was more work to be done.
- 02:11:55 Sen. Hamlett addressed Mr. Cronin and asked whether the DEQ had made telephone calls to applicants to determine whether they were still interested in pursuing their applications. Mr. Cronin responded they had relied on the knowledge of long-term staff.
- 02:14:14 Sen. Tropila recalled discussions around the stimulus projects and asked how many permits were issued late on stimulus projects. Director Opper responded no deadlines were missed on stimulus related gravel pit applications.

(BREAK)

## **AGENCY OVERSIGHT: FWP – WOLF MANAGEMENT**

### **Department presentation**

- 02:34:00 Joe Maurier, Director, Fish, Wildlife and Parks (FWP), initially commented on sage grouse. Director Maurier acknowledged the controversies surrounding wolves. Director Maurier explained FWP's commitment to manage Montana's wolves.

### **Litigation update, if any**

- 02:44:41 Bob Lane, Chief Legal Counsel, FWP, explained the status of the wolf litigation and the legal aspects of having wolves in Montana. Mr. Lane explained the legal implications of Wyoming's failure to delist. Mr. Lane addressed possible outcomes of the litigation. Mr. Lane explained the results of Montana's past and first hunting season on wolves and depicted the season as successful. Mr. Lane stated wolf numbers remained approximately the same.



## Response to questions raised at January EQC

### Accuracy of population count

02:58:08 Liz Bradley, Wolf Management Specialist, FWP, gave a PowerPoint presentation on the status of Montana's wolf population ([Exhibit 8](#)).

### Cost of management, state & federal funding

03:14:11 Ken McDonald, Chief of Wildlife, FWP, discussed the costs of wolf recovery at both the state and federal level. Mr. McDonald submitted written information regarding wolf funding ([Exhibit 9](#)).

### Case-by-case analysis of agency response to depredation

03:23:37 Director Maurier addressed the depredation response and submitted "Projected Wolf Packs and Breeding Pairs at Year End with Full Pack Removal" ([Exhibit 10](#)). Director Maurier also read the "Revised Protocol: Initial Response and Follow Up Response" ([Exhibit 11](#)).

### Impacts of wolves on ungulate populations

03:32:55 Justin Gude, Research and Technical Supervisor, FWP, presented a PowerPoint entitled "Wolf Ungulate Research in the GYA and Montana Statewide" ([Exhibit 12](#)).

### Presence of tapeworm in wolves and agency efforts on public education and outreach

03:47:02 Jennifer Ramsey, DMM, MPVM, gave a PowerPoint entitled "Echinococcus: Presence in Wolves, and Agency Efforts on Public Education and Outreach" ([Exhibit 13](#)).

04:02:00 Director Maurier thanked the EQC for the opportunity to speak. Director Maurier submitted a copy of Montana Outdoors, March-April 2010, which contained an article regarding Montana's recent wolf hunt ([Exhibit 14](#)) and the FWP Annual Report 2009 ([Exhibit 15](#)).

(LUNCH)

## AGENCY OVERSIGHT: FWP – WOLF MANAGEMENT (continued)

### Public Comment

05:08:04 Clay Dethlefsen submitted written testimony regarding wolves ([Exhibit 16](#)).

05:25:50 Gary Marbut, Montana Shooting Sports Association and Montana Western Fish and Game Association, spoke about wolf impacts on big game in Montana.

- 05:32:08 Charles Kleffner, representing Montana Sportsmen United, voiced concern about the lack of wolf management and the declining numbers of game animals in Montana.
- 05:35:10 Kim K. Baker, President of the Montana Cattlemen's Association, testified that she has a wolf problem on her ranch. Ms. Baker testified about her loss of livestock and money on her ranch due to depredation by wolves. Ms. Baker submitted information how other states utilize hunting dollars ([Exhibit 17](#)).
- 05:40:37 Toby Bridges, Lobo Watch, is a member of an advocacy group that supports the hunting of wolves. Mr. Bridges believed a non-native wolf was reintroduced into Montana. Mr. Bridges expressed concern about the loss of elk from wolf depredation.
- 05:46:55 John Steuber, Wildlife Biologist for the U.S. Wildlife Services, supported the new protocol instituted by FWP. Mr. Steuber looked forward to working with FWP to reduce livestock depredation by wolves.
- 05:49:51 Ben Erickson, Belgrade, submitted a letter from Shannon Brooks, Belgrade ([Exhibit 18](#)). Mr. Erickson was concerned about his dogs possible exposure to the tapeworm and how his dogs may have inadvertently spread the disease across Montana.
- 05:54:13 Matthew "Skip" Halmes, Cascade, was concerned about his cattle and stated he had never met anyone from Montana who wanted wolves.
- 05:56:52 Jim Brown, Montana Wool Growers' Association, spoke about the impact of wolves on the sheep industry. Mr. Brown asked for funding for livestock depredation and asked the Legislature to consider putting general fund money in the livestock remediation program. Mr. Brown made several suggestions for funding predator damage management. Mr. Brown submitted "Differential risk effects of wolves on wild versus domestic prey have consequences for conservation" ([Exhibit 19](#)).
- 06:05:09 Robert T. Fanning, Jr., Friends of the Northern Plains Elk Herd, spoke about the presence and hazards of *E. granulosus*.
- 06:10:59 Carol Giem, a rancher in Twin Bridges, thought the initial response assumed there are adequate U.S. Wildlife Services personnel available to address confirmed kills. Ms. Giem depicted U.S. Wildlife Services as the ranchers' lifeline. Ms. Giem also believed there should be a waiver for the 45-day period to address problem wolves.
- 06:15:19 Kerry White, Bozeman, Citizens for Balanced Use, submitted the following:
- photos of wolves in a populated Bozeman area ([Exhibit 20](#));
  - an article from *The Outdoorsman*, December 2009, regarding *E. granulosus* ([Exhibit 21](#));

- letter dated March 1, 2010, from Doug Black, Gallatin Gateway (Exhibit 22);
- article posted February 18, 2010, entitled "Gardiner elk hunt falls victim to wolves (Exhibit 23); and
- e-mail dated March 4, 2010, depicting a wolf pack in the Big Hole (Exhibit 24).

- 06:21:48 Fred Hirschy, a rancher in the Big Hole, applauded FWP on the changes in their management practices. Mr. Hirschy stated the real cost is not in the loss and that not all ranchers are wanting to be compensated for wolf depredation. Mr. Hirschy agreed more people are needed on the ground.
- 06:23:32 Stan Frasier, Helena, believed FWP does a fair job of managing wildlife, but he believed FWP should focus more on science and less on politics.
- 06:24:28 Sen. Debby Barrett, Senate District 36, read FWP's Mission Statement. Sen. Barrett believed it was unfortunate FWP waited so long to initiate its wolf management plan, but commended FWP for initiating the plan. Sen. Barrett read information from a newspaper article dated October 12, 2006, about bringing predators back. Sen. Barrett requested FWP to respond to the article.
- 06:27:30 Marc Cooke, a rancher in Stevensville, is proactive on his ranch in keeping wolves at bay and stated he would like to keep wolves in Montana.
- 06:28:04 Bob Ream, Chairman of the Montana Fish Wildlife and Parks Commission, agreed there are issues with wolves. Mr. Ream has met with the Montana Livestock Board and believed there will be good cooperation in the future among the agencies. Mr. Ream appreciated the work done by the U.S. Wildlife Services. Mr. Ream also believed wolves would have eventually come back to the northwest on their own.
- 06:30:40 Jerry Black, Predator Liberation Front, emphasized that the public trust doctrine states that wildlife be managed for the benefit of all people. Mr. Black believed the EQC should be representing all Montana's citizens.

#### **Questions & discussion -- EQC**

- 06:32:43 Rep. Milburn asked whether FWP's wolf count was accurate. Director Maurier clarified any number given by FWP is preceded by "a minimum" and there are probably wolves that are missing from the count. Rep. Milburn suggested a need to have balance with wolves and asked whether the wolf numbers could be reduced. Director Maurier agreed there are too many wolves and that more could be done to achieve a balance.
- 06:37:28 Rep. Dickenson asked about the impacts to the presence of great predators on the land itself. Director Maurier suggested too much of anything could throw things out of balance.

- 06:40:31 Sen. Ripley asked what FWP will take away from the hearing and work on to improve the wolf management program. Director Maurier stated he would like to look into the tape worm issue and explained lessons learned during the past hunting season. Director Maurier also agreed to look at the way the wolf hunting season is managed in the Big Hole. Director Maurier did not believe the problem should fall on the backs of hunters and sportsmen. Director Maurier agreed people should be compensated for their losses, but admitted he was not certain where the money would come from. Sen. Ripley commended FWP on its revised protocol and initial response but wondered about the 45-day waiver. Director Maurier agreed the 45-day waiver could be considered. Sen. Ripley thought it would be crucial to conduct a full and actual impact study of the wolf program on the state's economy.
- 06:50:05 Sen. Ripley asked Mr. Frasier about his reference to \$200,000,000 for grazing. Mr. Frasier stated the U.S. Forest Service and the U.S. Bureau of Land Management (BLM) lose approximately \$200,000,000 per year for public grazing. Mr. Frasier stated he obtained the information from the U.S. Forest Service and book entitled *Welfare Grazing*. Sen. Ripley commented he believed Mr. Frasier's figures were obtained from biased information.
- 06:51:47 Rep. French commented that the EQC is representing all the people of Montana because it is an open meeting and the public can be heard and share their opinions. Rep. French requested Mr. Everts to explain the role of the EQC.
- 06:52:54 Mr. Everts clarified the role of the EQC.
- 06:54:03 Rep. French asked about a reference to a report from a veterinarian regarding the tapeworm problem. Dr. Ramsey offered to provide the information to the EQC.
- 06:55:41 Sen. Hamlett asked about collaring wolves and asked whether a GPS could track wolves without the need to monitor by air. Ms. Bradley agreed that the technology was evolving, but has a high failure rate. Ms. Bradley explained very high frequency (VHF) collars are currently being used, and FWP is looking at better ways to monitor wolf packs in the future.
- 06:59:05 Chairman Vincent noted the difficulty of counting wolves in timbered areas and wondered if an infrared system could be used. Ms. Bradley explained how tracking occurs using collars and hunter reports. Chairman Vincent noted it is difficult to prove a breeding pair and underestimation of wolves results from the lack of resources. Ms. Bradley explained the specific definition of "breeding pair" is strict and meeting that definition makes it difficult.
- 07:03:07 Chairman Vincent was curious about other federal aid Montana may be able to apply for. Mr. McDonald stated he was referring to a 3:1 match of licensing fees with the excise tax on guns and ammunition.
- 07:04:35 Chairman Vincent emphasized a desire to know how many wolves are in Montana and asked if there was anyway volunteers could assist FWP in getting

an accurate count of wolves. Director Maurier thought it would be easy to train people to assist with a comprehensive wolf census.

07:06:47 Sen. Hamlett asked how many collared wolves there were in Montana at the present time. Carolyn Sime, Wolf Specialist, FWP, reported 38 collared wolves are in Montana and recalled 8 or 9 collared wolves were killed during the hunting season. Sen. Hamlett asked how many collared wolves were killed due to livestock predation. Ms. Sime did not have the information available. Sen. Hamlett asked whether the collars could be reused if they were recovered. Ms. Sime agreed.

07:09:21 Sen. Hamlett asked whether Director Maurier could let people know that collared wolves are not the best wolves to shoot. Sen. Hamlett wondered whether the collars from harvested wolves were returned to FWP, and Director Maurier confirmed the collars were returned.

(BREAK)

#### **Directions to staff**

07:31:00 Sen. Hamlett requested staff to research the policy in British Columbia regarding its wolf population control based on an elevational hunting season. Chairman Vincent also requested information on British Columbia's efforts to eradicate tapeworm.

07:33:07 Chairman Vincent also sought to know the requirements for an advisory group to participate in verifying wolf population groups.

07:33:42 Rep. Wilmer wondered whether reporting a sighting could be accomplished on-line.

07:34:43 Director Maurier suggested it would take training and FWP staff hours and equipment. Director Maurier offered to research the issue and report back to the EQC.

#### **HJR 1 BIOMASS STUDY (continued)**

##### **Policy recommendations from Biomass Working Group**

##### **Bob Harrington, DNRC**

07:35:53 Bob Harrington, DNRC, reported on the progress of the Biomass Working Group and submitted a written report ([Exhibit 25](#)).

##### **Public Comment**

07:42:48 John Fitzpatrick, Northwestern Energy, suggested if biomass generation were going to come to fruition, a good private/public partnership would be needed. Mr.

Fitzpatrick believed having the ability to utilize timber from Montana's national forests would be paramount to the success of any biomass generation endeavor. Mr. Fitzpatrick submitted a copy of Northwestern Energy's Montana Power Supply Prices 2009 ([Exhibit 26](#)). Mr. Fitzpatrick emphasized the need for production tax parity in the area of renewables. Mr. Fitzpatrick cautioned against making hasty recommendations that could potentially make the situation worse for Montana ratepayers. Mr. Fitzpatrick appreciated the interest in transmission and invited the EQC to join in those discussions.

### **Questions & discussion of policy recommendations/legislation**

- 07:56:45 Rep. Wilmer asked what the impact would be of restricting biomass generators so they cannot be used for baseload production. Mr. Fitzpatrick responded biomass plants are most efficient when allowed to run at their designed capacity and are not used to meet a fluctuating power load. Mr. Fitzpatrick thought there would be a need for a scheduled operation, which would not be very financially viable for the developer.
- 07:59:30 Sen. Keane asked whether it would be worthwhile if the incentives for biomass were the same as the incentives for wind power. Mr. Fitzpatrick agreed. Mr. Fitzpatrick suggested a production tax credit would be very beneficial. Sen. Keane asked if there was an incentive for loggers. Mr. Fitzpatrick thought it would be beneficial if an incentive were offered to the loggers directly.
- 08:02:54 Sen. Hamlett asked Mr. Fitzpatrick whether the cost and availability of water were factored into the cost. Mr. Fitzpatrick stated in the two circumstances Northwestern looked into, water was not an issue, but agreed cost availability of water could be an issue for other projects.
- 08:03:55 Sen. Tutvedt asked where the price would be if all the tax credits were available. Mr. Fitzpatrick responded it would depend on the capital cost of a project, but projected it would be in the \$60-70 range.
- 08:06:02 Rep. French asked whether there was a discussion of woody biomass combined with agricultural biomass. Mr. Fitzpatrick said there were no discussions, and the costs of collecting and distributing a combination of woody biomass and agricultural crops were prohibitive. Rep. French asked whether in an area where they have lost timber business and were making woody biomass, whether it would make a difference to the customer if they were paying a little bit more, but the local economy was boosted because of the biomass production. Mr. Fitzpatrick believed there could be a substantial impact to local communities that depend on the timber industry. Mr. Fitzpatrick believed it would be ideal to co-locate a facility next to a mill, but cautioned the current rate-making process at the Public Service Commission (PSC) does not allow consideration of socioeconomic factors. Mr. Fitzpatrick identified a need to impact ratepayers as little as possible.
- 08:10:26 Sen. Tutvedt stated he just attended a hearing at F.H. Stoltze Land and Lumber Company, and he did not believe the community would support a rate increase.

- 08:11:00 Sen. Keane asked Ms. Farr to comment on biomass and the U.S. Forest Service. Angela Farr, U.S. Forest Service, Northern Region, stated there was a great deal happening with biomass. Ms. Farr just attended a conference in Boise, Idaho, regarding biomass opportunities in Montana and Idaho. Ms. Farr was hopeful progress would be made regarding biomass.
- 08:13:56 Chairman Vincent asked Mr. Fitzpatrick whether he had looked into why the 1.3 million ton capacity that was coming into Smurfit Stone would not be achievable. Mr. Fitzpatrick could not specifically answer the question.
- 08:16:54 Rep. Dickenson asked Director Sexton whether it would be feasible to have 4-6 biomass plants in eastern Montana that use agricultural product and allowing those plants to access the co-ops' transmission. Director Sexton thought it would depend upon economic factors, including transportation costs.
- 08:19:05 Ms. Farr added there are applications with agricultural materials that may have some potential.
- 08:19:39 Ms. Farr stated the Smurfit closure is setting the market, and explained times are challenging. Ms. Farr believed time, stability, and continuity of fuel prices would occur as the gap left by Smurfit is filled.
- 08:22:34 Chairman Vincent suggested waiting to discuss the recommendations of the working group.

**Continued Council discussion of any study recommendations & possible legislation – if necessary**

- 08:23:17 Sen. Keane addressed the SJ 28 Recycling Worksheet (Minutes of March 4, 2010, EQC meeting, Exhibit 13) and moved the EQC adopt option (b) of the first study task, and option (a) of the second, third, fourth, and fifth study tasks. Sen. Keane clarified his motion did not include the recommendations. Ms. Nowakowski commented on how the EQC will be addressing recommendations in the future.
- 08:26:26 Rep. Wilmer reviewed proposed federal legislation addressing e-waste. Rep. Wilmer believed options (a) and (c) of the e-waste study task could both be accomplished. Chairman Vincent asked Rep. Wilmer to address the costs of the legislation, and Rep. Wilmer responded there were no costs. Chairman Vincent stated he had heard different information regarding the costs to manufacturers and retailers. Chairman Vincent asked Ms. Nowakowski to clear up the issue.
- 08:31:00 Rep. Dickenson agreed both options (a) and (c) of the e-waste study task have merit and supported the amendment offered by Rep. Wilmer.
- 08:32:22 Rep. Milburn asked for more information about option (c). Ms. Nowakowski explained the option could be as narrow or as broad as the EQC would like. Rep. Milburn stated he was not comfortable supporting option (c) without knowing exactly what the EQC would be supporting.

08:34:19 Rep. Smith agreed with Rep. Milburn and thought it should be the responsibility of the state.

08:34:51 Sen. Keane resisted Rep. Wilmer's proposal.

08:35:39 Ms. Fitzpatrick commented on study task 2 and thought all three options should be included.

08:37:04 Rep. Wilmer stated she was referring to the one bill referenced on page 14 of the draft report, and that the bill absolutely has no cost.

08:37:48 Sen. Tropila asked to vote on Sen. Keane's motion. Sen. Keane's motion carried unanimously by roll call vote.

08:39:37 Ms. Fitzpatrick moved to add options (b) and (c) regarding rural recycling challenges.

08:40:27 Chairman Vincent noted option (c) contained an absolute statement and noted how recycling does not make good financial sense in some areas. Ms. Nowakowski commented the statements are only drafts.

08:42:55 Ms. Fitzpatrick's motion carried unanimously by voice vote. Mr. Cebull, Mr. Pattison, Ms. Conradi, and Sen. Shockley voted aye by proxy.

08:43:35 Ms. Nowakowski stated she would place the findings in the draft report for review by the EQC in May.

08:44:23 Sen. Keane asked that underground storage tanks be placed on the EQC's May agenda. Chairman Vincent requested Mr. Everts to track the proposed rules regarding CECRA.

08:46:10 Rep. Smith expressed concern about people who are chipping and the regulations on chippers. Ms. Nowakowski explained air-quality personnel will be meeting on March 23, 2010, and that she would attend that meeting and suggested a need to investigate the exemption for portable forestry projects. Rep. Smith was concerned about other regulations that do not make sense.

08:49:20 Sen. Keane addressed the Fuels for Schools program and wondered whether something could be done for people providing chips for that program. Chairman Vincent explained schools are paying a premium price.

08:50:42 Sen. Tropila thought it would be a good idea to have Mr. Klemp, Mr. McKenzie, and Mr. Jump back to see if they resolved their existing issues. Chairman Vincent agreed.

08:51:53 Sen. Hamlett noted if an agricultural exemption is granted, there would be no control. Chairman Vincent commented on emissions.



- 08:53:37 Rep. Milburn suggested a report on gravel pit meetings would be beneficial. Chairman Vincent agreed and stated he would add gravel pits to the May agenda.
- 08:55:37 Chairman Vincent commented on the task force and biomass. Chairman Vincent addressed the proposed policy recommendations and noted the need for new technologies. Chairman Vincent was concerned since venture capital is going to be hard to obtain and that the state is not in a position to help.
- 08:59:11 Ms. Nowakowski commented she has a list of potential speakers for the May meeting.
- 09:00:05 Chairman Vincent suggested a need to look at *The Price of Flame* and review proposed legislation from last session.
- 09:00:43 Rep. Smith requested information on what other problems are being encountered with operating costs such as equipment tax and workers' compensation.
- 09:01:58 Rep. French stated she was aware of a company that was utilizing a combination of agriculture crops, agriculture residue, and timber. Rep. French offered to obtain additional information.
- 09:02:50 Sen. Tutvedt suggested the EQC discuss things that are going to keep costs down.
- 09:03:46 Chairman Vincent noted Mr. Jump has retooled his business to do chipping and suggested asking Mr. Jump to address the EQC.
- 09:07:06 Sen. Tutvedt agreed operating costs were important but noted operating costs were not really in play before the EQC. Sen. Keane commented on workers' compensation exclusions and liability.

**PUBLIC COMMENT on any matter not contained in this agenda and that is within the jurisdiction of the EQC**

There was no further public comment.

**OTHER BUSINESS**

There was no other business to come before the EQC.

**INSTRUCTIONS TO STAFF**

There were no further instructions to staff.

**ADJOURN**

- 09:11:28 Meeting adjourned at 5:11 p.m.

**Additional Exhibits:**

Letter dated February 17, 2010, to Rep. Vincent from Steve Marks ([Exhibit 27](#)).

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