



ENVIRONMENTAL QUALITY COUNCIL

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GOVERNOR BRIAN SCHWEITZER
DESIGNATED REPRESENTATIVE
MIKE VOLESKY

HOUSE MEMBERS
SUE DICKENSON
JULIE FRENCH
MIKE MILBURN
CARY SMITH
CHAS VINCENT
FRANKE WILMER

SENATE MEMBERS
BRADLEY MAXON HAMLETT
JIM KEANE
RICK RIPLEY
JIM SHOCKLEY
MITCH TROPILA
BRUCE TUTVEDT

PUBLIC MEMBERS
JEFF PATTISON
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 September 10, 2009

Date: May 28, 2009

Room 172, State Capitol Building
Helena, Montana

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

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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

REP. CHAS VINCENT, Chairman
SEN. BRADLEY MAXON HAMLETT, Vice Chairman
SEN. JIM KEANE
SEN. RICK RIPLEY
SEN. JIM SHOCKLEY
SEN. MITCH TROPILA
REP. SUE DICKENSON
REP. JULIE FRENCH
REP. MIKE MILBURN
REP. CARY SMITH
REP. FRANKE WILMER
MR. BRIAN CEBULL
MS. DIANE CONRADI
MR. MIKE VOLESKY

COMMITTEE MEMBERS EXCUSED:

SEN. BRUCE TUTVEDT
MS. MARY FITZPATRICK
MR. JEFF PATTISON

STAFF PRESENT

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

Visitors

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

COMMITTEE ACTION

- The EQC approved the EQC Minutes from July 14-15, 2008, and September 8-9, 2008.
- The EQC elected Rep. Chas Vincent as Chairman and Rep. Bradley Maxon Hamlett as Vice Chairman.

CALL TO ORDER AND ROLL CALL

AGENDA

00:00:02 Sen. Shockley, Chairman *pro tem* of the Environmental Quality Council (EQC), called the meeting to order at 9:00 a.m. The secretary called the roll ([Attachment 3](#)) and the EQC members introduced themselves.

ADMINISTRATIVE MATTERS

Staff Introductions

00:06:52 Mr. Everts introduced the EQC staff.

Adoption of EQC Minutes

00:15:08 Rep. Dickenson moved to accept the July 14-15, 2008, and September 8-9, 2008, EQC Minutes. The motion carried unanimously by voice vote.

EQC Budget Overview

00:15:34 Mr. Everts reported a remaining 2007-08 EQC budget of \$12,025.70 and a 2009-10 interim budget of \$75,298, which was reduced from the previous interim by \$6,172.

COUNCIL AND STAFF RESPONSIBILITIES

Purpose of the EQC/Statutory Duties - Mr. Everts

00:19:07 Mr. Everts began a PowerPoint presentation regarding the purpose and statutory duties of the EQC ([EXHIBIT 1](#)).

EQC Draft Rules and Procedures - Ms. Stockwell

00:25:00 Hope Stockwell, Research Analyst, Legislative Environmental Policy Office, continued the PowerPoint presentation and reviewed the EQC draft rules and procedures.

EQC Decisionmaking Process - Mr. Kolman

00:33:23 Joe Kolman, Research Analyst, Legislative Environmental Policy Office, continued the PowerPoint presentation and reviewed the EQC decisionmaking process.

EQC Subcommittee Formation Criteria - Ms. Stockwell

00:37:30 Ms. Stockwell continued the PowerPoint presentation and reviewed EQC subcommittee formation.

EQC Staff/Council Responsibilities and Role - Ms. Nowakowski

00:41:50 Sonja Nowakowski, Research Analyst, Legislative Environmental Policy Office, continued the PowerPoint presentation and reviewed EQC staff and Council responsibilities and roles.

EQC Mailings and Staff/Council Communication - Ms. Stockwell

00:46:15 Ms. Stockwell continued the PowerPoint presentation and reviewed EQC mailings and communication.

AGENCY OVERVIEW PRESENTATIONS

Department of Natural Resources and Conservation - Director Sexton

00:54:31 Mary Sexton, Director of the Department of Natural Resources and Conservation (DNRC), provided an overview of the DNRC.

Questions from the EQC

- 01:17:31 Rep. French asked Director Sexton how the general public would know how to apply for new funds made available by the DNRC. Director Sexton provided specific information regarding the DNRC website. Rep. French requested numbers or percentages relating to the effect of the pine beetle on Montana timber. Director Sexton offered to obtain a map depicting Montana's pine beetle infestation.
- 01:21:07 Rep. Dickenson asked whether a study on Coal Bed Methane (CBM) water would be done by either the Water Policy Interim Committee or the EQC. Director Sexton responded. Rep. Dickenson asked whether there was more of a need to study jurisdictional issues rather than water-quality issues. Director Sexton responded.
- 01:23:02 Sen. Shockley asked about the \$10 million available for fire fighting. Director Sexton provided clarification. Director Sexton submitted DNRC's annual report ([EXHIBIT 2](#)).

Department of Environmental Quality - Director Opper

- 01:24:11 Richard Opper, Director of the Department of Environmental Quality (DEQ), provided an overview of the DEQ. Director Opper submitted information regarding federal stimulus money being funneled through the DEQ ([EXHIBIT 3](#)).

Questions from the EQC

- 01:41:10 Rep. French requested more information regarding the block grant to local governments and the tribes. Director Opper responded. Tom Livers, Deputy Director, DEQ, commented. Rep. French asked about block grants. Mr. Livers responded. Director Opper commented further about federal stimulus money.
- 01:44:18 Sen. Ripley asked whether the DEQ would receive the federal stimulus money in a lump sum. Director Opper responded.
- 01:47:28 Sen. Keane asked questions regarding the Underground Storage Tank Program and whether the sites would be cleaned up rather than continue to be monitored. Director Opper responded.

Department of Fish, Wildlife, and Parks - Director Maurier

- 01:49:45 Joe Maurier, Director of the Department of Fish, Wildlife, and Parks (FWP), provided an overview of FWP. Director Maurier submitted an organizational chart of the FWP ([EXHIBIT 4](#)).

Questions from the EQC

- 02:02:42 Chairman Shockley asked for a history on the wildlife refuge outside of Helena. Director Maurier provided a history of the purpose of the wildlife refuge. Rep.

Vincent asked how much money had been expended and how much more funding would be needed. Director Maurier responded.

02:06:15 Rep. Wilmer stated the organizational chart did not match the proposed changes. Director Maurier provided clarification regarding FWP's organizational structure.

02:08:53 Mr. Cebull asked who the Divisions would report to. Mr. Maurier responded. Mr. Cebull wondered whether there would still be decision making in the local offices. Mr. Maurier responded.

02:11:48 Sen. Shockley noticed FWP staff reported to the Director rather than the Deputy Director. Director Maurier agreed.

02:12:25 Director Maurier continued his overview.

Questions from the EQC

02:19:02 Sen. Ripley asked whether there had been any discussion or a plan on how to reach elk population objectives. Director Maurier responded.

02:23:17 Rep. Dickenson recalled that various private industries had expressed an interest in partnering to address mussels. Mr. Maurier agreed any help with the problem would be appreciated.

02:25:30 Rep. French addressed the Fort Peck Fish Hatchery and requested an update regarding recent legislation. Director Maurier agreed to provide an update in the future.

02:27:36 Rep. Vincent asked about FWP legacy dollars. Director Maurier responded.

02:29:07 Sen. Shockley noted FWP had failed two audits.

02:29:29 Sen. Ripley asked whether the EQC should ask the three directors for their departments' goals and priorities for the interim. Mr. Everts clarified past EQCs had made those requests.

(BREAK)

02:46:43 Rep. Wilmer reconvened the meeting as Chair *pro tem*.

Election of the EQC Chairman and Vice Chairman

02:47:58 Sen. Keane nominated Rep. Vincent as Chairman of the EQC.

02:48:50 Rep. Dickenson nominated Sen. Shockley as Chairman of the EQC.

02:50:55 Rep. Vincent and Sen. Shockley addressed their nominations as Chairman of the EQC. Rep. Vincent was elected Chairman.

02:57:27 Rep. French nominated Sen. Hamlett as Vice Chairman of the EQC.
02:57:57 Sen. Ripley nominated Sen. Keane as Vice Chairman of the EQC.
02:59:17 Sen. Hamlett and Sen. Keane addressed their nominations as Vice Chairman Officer of the EQC. Sen. Hamlett was elected Vice Chairman Officer.

(LUNCH)

04:05:11 Chairman Vincent reconvened the meeting.

EQC STATUTORY REPORTING REQUIREMENT - WATER ADJUDICATION PROCESS OVERSIGHT

04:05:42 Mr. Kolman provided background information on water adjudication in Montana.

Department of Natural Resources and Conservation - DNRC Staff

04:06:40 Jim Gilman, Adjudication Bureau Chief, DNRC, gave a PowerPoint presentation on water adjudication ([EXHIBIT 5](#)). Mr. Gilman also submitted and reviewed "DNRC Report to EQC HB 22 Adjudication Progress, May 28, 2009 ([EXHIBIT 6](#)) and "Water Right Adjudication in Montana" ([EXHIBIT 7](#)).

Questions from the EQC

04:37:56 Sen. Shockley asked whether the Powder River decree was final. Mr. Gilman responded. Sen. Shockley commented he was told Ravalli County was experiencing problems with computer interface. Mr. Gilman provided an explanation.

04:42:07 Sen. Ripley requested a copy of Mr. Gilman's prepared statement ([EXHIBIT 8](#)).

04:42:30 Rep. French asked Mr. Gilman whether he was aware of the letter legislators received from the Senior Water Rights Coalition. Mr. Gilman was not aware.

04:43:34 Joe Lamson, Deputy Director, DNRC, commented on the Senior Water Rights Coalition.

04:44:16 Rep. Milburn asked whether the reference to "estimated completion" would mean a final decree is issued. Mr. Gilman provided clarification. Rep. Milburn asked how or why a decree would be opened back up. Mr. Gilman explained.

04:45:40 Chairman Vincent asked whether the process had delayed deed transactions. Mr. Gilman responded.

Montana Water Court Update - Judge Loble

04:47:14 Bruce Loble, Water Court Judge, reported on the water adjudication process.

- 04:57:06 Sen. Shockley asked whether the Powder River Basin adjudication would be reopened. Judge Loble explained.
- 05:01:03 Sen. Ripley asked whether Judge Loble's term will expire next month. Judge Loble agreed. Sen. Ripley asked why Judge Loble was not confirmed by the Senate. Judge Loble explained.
- 05:02:24 Sen. Hamlett wondered how to look up a water right. Judge Loble responded.
- 05:03:28 Rep. Dickenson recalled the Governor ended the adjudication fees and that a general appropriation was instituted instead. Mr. Gilman explained.
- 05:05:38 Upon request from Chairman Vincent, Judge Loble provided an explanation of issue remarks.
- 05:08:39 Sen. Shockley asked whether doing away with issue remarks when there is no objection would save the court time. Judge Loble agreed, but questioned the accuracy of the water rights.
- 05:10:54 Mr. Cebull recalled a past issue regarding whether people could represent themselves before the water court and asked whether the issue had been resolved. Judge Loble explained how the issue was resolved by the Montana Supreme Court.

EQC STATUTORY OVERSIGHT FUNCTION - UPDATE ON DEQ's IMPLEMENTATION OF THE OPEN-CUT PROGRAM - DEQ Staff

- 05:14:24 Director Opper explained how the audit and recent court cases affected the Opencut Mining Program. Director Opper provided an update on the Opencut Mining Program.

Questions from the EQC

- 05:29:10 Sen Ripley asked Director Opper to refresh his memory on HB 678.
- 05:29:58 Mr. Kolman explained HB 678.
- 05:30:35 Rep. Wilmer relayed questions from her constituents regarding the lack of a requirement for hydrogeological impact studies in the Gallatin and concerns that permits do not consider the cumulative impact of multiple pits in close proximity. Director Opper provided his explanation regarding DEQ's legal authority and technical expertise.
- 05:34:42 Rep. Milburn thanked everyone for their support of HB 678.
- (BREAK)

INTRODUCTION AND REVIEW OF INTERIM WORK PLAN OPTIONS

Work Plan Option Matrix Introduction - Mr. Everts

- 05:51:08 Mr. Everts reviewed the 2009-10 Draft EQC Work Plan ([EXHIBIT 9](#)) and EQC Work Plan Matrix 2009-10 ([EXHIBIT 10](#)).
- 06:00:50 Ms. Nowakowski discussed HJR 1, Biomass Study ([EXHIBIT 11](#)).

Questions from the EQC

- 06:06:11 Rep. French commented the FTE numbers could be increased.
- 06:06:42 Rep. Wilmer asked for a total FTE budget for the EQC. Ms. Nowakowski responded EQC's total FTE is 1.84.
- 06:06:58 Rep. Dickenson suggested Option A could be a feasibility study conducted by the Department of Commerce (DOC). Ms. Nowakowski agreed. Rep. Dickenson suggested doing the feasibility study in conjunction with the DOC. Ms. Nowakowski agreed to contact representatives from the DOC.
- 06:09:35 Sen. Keane commented he did not want to waste the DOC funding resources studying biomass and asked whether the funds could be directed into a specific project. Ms. Nowakowski responded. Ms. Conradi asked whether developing parameters for a pilot project would address Sen. Keane's concern. Sen. Keane responded.
- 06:13:29 Mr. Volesky agreed with Sen. Keane and suggested a discussion should occur with the DOC.
- 06:13:55 Chairman Vincent agreed with trying to direct the money toward projects and suggested that outside investors would be needed, Chairman Vincent saw a need for increasing the FTE. Rep. French asked that someone from the Department of Agriculture also be included, as well as someone from the wood products industry.
- 06:16:40 Mr. Everts reviewed HJR 30, Fire Suppression Study ([EXHIBIT 12](#)).
- 06:20:41 Barbara Smith, Legislative Fiscal Division, offered to relay fire suppression cost information to the EQC.
- 06:21:15 Sen. Keane acknowledge the three members of the EQC who were part of the Fire Suppression Interim Committee, and suggested information on current fire suppression efforts should be reported to the EQC. Sen. Keane thought resources could be used in other places. Rep. Milburn suggested reading the report.
- 06:22:54 Ms. Conradi asked Mr. Everts whether there was overlap between Option A and the Fire Suppression Interim Committee Report. Mr. Everts suggested reading

the Fire Suppression Interim Committee Report would greatly assist the EQC members. Ms. Conradi and Sen. Ripley agreed with Sen. Keane.

06:25:18 Rep. Wilmer suggested looking at the link between fire suppression and biomass. Chairman Vincent agreed.

06:26:22 Ms. Nowakowski reviewed SJR 28, Study of Recycling and Solid Waste Recovery ([EXHIBIT 13](#)).

Questions from the EQC

06:37:45 Rep. Dickenson believed the City of Great Falls would like to get out of the recycling business since recycling programs have repeatedly operated at a loss. Rep. Dickenson requested Ms. Nowakowski to summarize the differences between a "white paper" and an "interim report." Ms. Nowakowski explained.

06:39:53 Rep. Wilmer thought market studies would be useful, but time intensive.

06:40:53 Sen. Shockley supported recycling but did not believe it would be very marketable.

06:41:38 Ms. Stockwell explained HJR 15 ([EXHIBIT 14](#)).

06:46:00 Rep. Milburn thought the idea was good but noted funding would be problematic. Rep. Milburn explained the different ideas for block management.

06:48:19 Sen. Ripley suggested EQC members review the last audit of the block management program. Sen. Ripley commented the amount of land is declining and administration funding is increasing every year.

06:49:27 Ms. Stockwell clarified block management is only one option.

06:50:03 Rep. Smith envisioned an opportunity to revamp the program, add recreational opportunities, and enhance block management.

06:51:01 Rep. French explained how people are purchasing hunting rights in eastern Montana through leasing.

06:53:01 Ms. Stockwell explained 86 percent of the block management money collected goes to on-the-ground block management; 6 percent is allocated to enforcement; and 8 percent is for overhead.

06:53:55 Ms. Smith clarified the program that manages block management has to pay their share of administrative costs.

06:54:59 Chairman Vincent stated he would like more information regarding the Habitat Conservation Plan. Mr. Volesky provided an explanation.

06:56:54 Rep. Dickenson suggested the EQC should receive more information on the issue without devoting a considerable amount of committee time or staff resources.

06:58:35 Mr. Kolman reviewed the statutory duties of the EQC and the water policy options contained in the Work Plan.

Questions from the EQC

07:06:15 Rep French requested clarification regarding coordination of issues between the EQC and the Water Policy Interim Committee.

07:07:13 Sen. Shockley commented the EQC should just do what is statutorily required regarding water policy. Chairman Vincent commented on the workload of the WPIC.

Public Comment

07:10:03 Will Selzer, Montana Recycling Association, addressed SJR 28.

07:16:26 Dave Galt, Montana Petroleum Association, addressed SB 95 and the nutrient criteria being considered by the Nutrient Advisory Group.

07:17:54 Mr. Everts reviewed pp. 11-12 of the Work Plan and the EQC's statutory duties.

07:21:17 Ms. Stockwell reviewed the EQC's general oversight statutory duties and rule review.

Questions from the EQC

07:25:44 Sen. Keane inquired about the \$1.3 million in stimulus money identified by the DEQ for cleanup of underground storage tanks. Ms. Stockwell replied.

07:26:07 Mr. Everts directed the EQC members to past EQC publications and reports.

07:31:03 Sen. Keane commented on the permitting process. Sen. Keane supported the EQC taking an in-depth review of the permitting process. Sen. Keane was interested how other states addressed the permitting process.

07:33:44 Ms. Nowakowski explained Ms. Fitzpatrick's desire to have a study that focuses on energy supply.

07:34:13 Rep. Dickenson further explained Ms. Fitzpatrick's recommendations for energy efficiency.

07:36:43 Ms. Conradi emphasized that some energy efficiency issues overlap with biomass and could be addressed in the biomass study.

- 07:37:40 Mr. Everts added the issue would be studied by the Energy and Telecommunications Interim Committee (ETIC) and suggested efforts should be coordinated with the ETIC.
- 07:39:10 Rep. Dickenson recalled Ms. Fitzpatrick was also going to present her ideas to the ETIC.
- 07:40:09 Ms. Nowakowski stated the ETIC would meet in July and would be working on developing a new state energy policy.
- 07:40:40 Rep. Dickenson reviewed her suggestion to study environmental public health and look what other states are doing to gather, track, and share information.
- 07:44:31 Chairman Vincent asked whether the Center for Disease Control (CDC) was providing the funding. Rep. Dickenson responded.
- 07:46:49 Mr. Everts solicited potential study topics from the EQC members.
- 07:47:29 Ms. Conradi wondered whether Coal Bed Methane (CBM) would be a water quality issue and would be addressed by the WPIC.
- 07:49:59 Rep. French asked whether it would be possible for both committees to work on CBM. Mr. Everts agreed.
- 07:51:13 Rep. Wilmer thanked Rep. Milburn for his work on the gravel pit bill. Rep. Wilmer agreed other issues with gravel pits should be addressed.
- 07:52:32 Sen. Shockley stated any member of the EQC can ask for 12 hours of staff time. Mr. Everts clarified allocation of statutory duties could also include monitoring gravel pits or holding a panel discussion.
- 07:54:10 Ms. Conradi asked how long it would take to update a trends publication like "Our Montana Environment . . . Where Do We Stand?" Mr. Everts responded it would be time consuming.
- 07:55:51 Mr. Everts encouraged the EQC members to discuss their ideas among themselves.
- 07:57:26 Chairman Vincent recessed the meeting at 4:58 p.m.

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