



ENVIRONMENTAL QUALITY COUNCIL

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HELEN THIGPEN, Staff Attorney
KEVIN MCCUE, Secretary
JOE KOLMAN, Legislative Environmental Analyst

MINUTES

June 19, 2013

September 13, 2012

Room 172
State Capitol

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

SEN. JIM KEANE, Chair
REP. DUANE ANKNEY, Vice Chair

SEN. JOHN BRENDEN
SEN. BRADLEY MAXON HAMLETT
SEN. RICK RIPLEY
SEN. CHAS VINCENT
SEN. GENE VUCKOVICH

REP. BILL MCCHESENEY
REP. CARY SMITH
REP. KATHLEEN WILLIAMS
MR. DEXTER BUSBY

MS. DIANE CONRADI
MS. MARY FITZPATRICK
MR. JOHN YOUNGBERG

COMMITTEE MEMBERS EXCUSED

REP. JERRY BENNETT
REP. MICHELE REINHART
GOVERNOR'S DESIGNEE

STAFF PRESENT

JASON MOHR, Research Analyst
SONJA NOWAKOWSKI, Research Analyst
HOPE STOCKWELL, Research Analyst
HELEN THIGPEN, Staff Attorney
CHRISTINA ALLEN, Fiscal Analyst
KEVIN MCCUE, Secretary
JOE KOLMAN, Legislative Environmental Analyst

Visitors

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

COMMITTEE ACTION

- The EQC approved the DEQ's draft legislation for pre-introduction.
- The EQC approved four bill drafts brought by the DFWP for pre-introduction.
- The EQC accepted and agreed to send a revised letter to Montana's congressional delegation regarding the use of Canadian air tankers to fight wildfire.
- The EQC approved a letter to Montana's congressional delegation regarding forest land management.

CALL TO ORDER AND ROLL CALL

00:00:03 Sen. Keane called the meeting to order and roll was noted ([Attachment 3](#)).

AGENDA

AGENCY OVERSIGHT: REVIEW OF PROPOSED AGENCY LEGISLATION

Introduction - Mr. Kolman

00:01:11 Mr. Kolman explained the EQC would now review proposed agency legislation to determine whether or not bill drafts will be submitted for pre-introduction.

Tom Livers - DEQ

00:01:36 Tom Livers, Department of Environmental Quality (DEQ) Deputy Director, introduced draft legislation regarding gravel pit applications, including a minor correction. (**EXHIBIT 1**) Mr. Livers said the bill draft proposes to allow DEQ 30 days instead of the current 10 working days to reply to those applicants who have received three deficiency letters.

Public Comment

00:08:11 Cary Hegreberg, Montana Contractors Association, said the Contractors Association had been engaged in legislation pertaining to open cut mines for years and complimented DEQ for its constructive work. Mr. Hegreberg said the Contractors Association had been surprised by the announcement that DEQ would seek legislation, but that the Association had since been shown the DEQ's legislation and some of their fears had been allayed. Mr. Hegreberg said they are not sure this fix would work and is concerned that the DEQ could use the legislation as a mechanism for prolonging the application process, which can be problematic for contractors.

EQC questions, discussion, and action, if any

00:13:01 Mr. Busby asked Mr. Livers what percentage of applications cycle through multiple deficiency letters. Mr. Livers said less than 5% of applicants receive deficiency letters.

00:14:00 Sen. Brenden asked Mr. Livers what could be done to decrease the amount of time involved in gravel pit permitting. Mr. Livers said they recognize the demand for licenses in eastern Montana is not being met and that an effort was being made to display a stronger, more frequent presence in that region.

00:19:53 Sen. Vuckovich asked Mr. Livers if the Contractors Association is developing amendments to the DEQ's proposal and if the two would be working together. Mr. Livers said cooperation makes good sense and that the two would look for common ground.

00:21:15 Sen. Hamlett asked Mr. Hegreberg if the definition of the term "expeditious" is the subject of disagreement between the Contractors Association and the DEQ. Mr. Hegreberg said this is a fair assessment and probably differs case to case. Mr. Hegreberg agreed a meeting between the Association and the DEQ would be beneficial.

00:23:39 Sen. Keane asked Mr. Hegreberg if his organization would prefer the EQC pre-introduce the bill or postpone it for later discussion. Mr. Hegreberg said they would support pre-introduction as long as it is understood that the Contractors Association would like to reserve the right to introduce an amendment.

00:24:50 Rep. Ankney moved that the DEQ bill draft proceed to pre-introduction. The motion passed 15-1 by voice vote. Sen. Brenden voted no. Rep. Bennett and Rep. Reinhart voted aye by proxy.

Paul Sihler - DFWP

00:25:34 Paul Sihler, Department of Fish, Wildlife and Parks (DFWP), Special Projects Manager, introduced four bill drafts proposed by his agency pertaining to wolf hunting, Dingell-Johnson funding, the "Good Neighbor" policy, and youth combination hunting licenses. ([EXHIBIT 2](#)) ([EXHIBIT 3](#))

EQC questions, discussion, and action, if any

00:39:22 Sen. Ripley asked Mr. Sihler if those who obtain a wolf trappers' license will be required to complete a safety course and the cost of such a course. Mr. Sihler said the license allows for trapping of up to three wolves and requires completion of a free trapper education class.

00:40:59 Sen. Brenden asked Mr. Sihler to compare the pricing between Montana non-resident wolf licenses and those of other states. Mr. Sihler said Wyoming non-resident wolf licenses cost \$180 and in Idaho they cost \$31.75. Sen. Brenden asked for the cost of a resident wolf license in Montana. Mr. Sihler said it costs \$19.

00:44:05 Sen. Hamlett asked Mr. Sihler if there had been consideration of keeping the season open until the full quota is met. Mr. Sihler said he could not answer at this time but that the question would be put before the Fish, Wildlife and Parks Commission.

00:45:06 Rep. Williams asked Mr. Sihler for the science DFWP is utilizing regarding the proposed change for when wolf hunters have to wear "hunter orange." Mr. Sihler said the elimination of the requirement is due to social, not scientific, concerns, and some parties believe the concession may aid trapping outside of big game season. Rep. Williams asked Mr. Sihler to provide statistics regarding whether or not policies suspending the hunter orange requirement represent a public safety concern.

00:47:07 Rep. Ankney moved that the proposed wolf legislation proceed to pre-drafting. The motion passed 16-0 by voice vote. Sen. Vincent, Rep. Bennett, and Rep. Reinhart voted aye by proxy.

00:48:05 Rep. Ankney moved that the proposal pertaining to Dingell-Johnson funding proceed to pre-drafting.

00:48:27 Sen. Brenden asked Mr. Sihler for examples of what the funding going into fishing provides. Mr. Sihler said the funds provide for fisheries management, hatcheries, the fishing access site program, acquisition, operations, and maintenance on fishing access sites, fish health and disease programs, and work involving endangered species. Sen. Brenden asked if some of the funding would

be used to buy fishing access sites. Mr. Sihler said a small portion would be used to acquire fishing access sites. Sen. Brenden asked Mr. Sihler to provide a list of sites purchased with Dingell-Johnson monies going back four to five years.

- 00:50:47 Rep. Ankney's motion passed by voice vote. Sen. Vincent, Rep. Bennett, and Rep. Reinhart voted aye by proxy.
- 00:51:37 Sen. Hamlett moved the "good neighbor" bill proceed to pre-drafting. The motion passed unanimously by voice vote. Sen. Vincent, Rep. Bennet, Rep. Reinhart, and Ms. Conradi voted aye by proxy.
- 00:52:31 Sen. Hamlett asked Mr. Sihler, regarding the bill draft dealing with the youth combo license, if sales of licenses are decreasing. Mr. Sihler said that although license sale rates vary depending on the license, there has been a downward trend in national license sales. Sen. Hamlett asked if wolves are part of this equation. Mr. Sihler said he cannot answer definitively but that the wolf issue could play a role in regard to big game licenses.
- 00:55:21 Sen. Ripley asked if sales of antelope licenses had increased or decreased. Mr. Sihler said there has been no change to the price of resident or non-resident licenses in eight years. Sen. Ripley said a constituent told him of a change to the application fee this year. Mr. Sihler deferred to Hank Worsch, License Bureau Chief, who said sales have not decreased and that the reason for the change is attributed to differences between the two types of antelope license.
- 00:58:24 Sen. Brenden asked Mr. Worsch to detail the number of unsold elk licenses. Mr. Worsch said 690 of 17,000 big game combination licenses, 1,700 of 2,158 elk licenses, and 1600-1700 of 2,195 deer combination licenses remain unsold. Sen. Brenden asked for the cost of elk and deer combination licenses. Mr. Worsch said elk licenses cost \$749 and deer licenses cost \$556. Sen. Brenden asked if licenses fees had increased. Mr. Worsch said they had not as they were set with I-161 (2010).
- 01:02:04 Sen. Hamlett asked if there had been a decrease in the population of moose, elk, and deer. Ken MacDonald, Chief of Wildlife, said the answer depends on the time frame examined, as there are more of these animals than 15 years ago, but less than three years ago. Sen. Hamlett asked if wolves have had an impact on the game population. Mr. MacDonald said they have in certain hunting districts, such as in the Bitterroot.
- 01:05:12 Sen. Keane said he would like to see studies done early in the next EQC interim regarding game populations and the effect of wolf trapping.
- 01:06:18 Rep. Ankney moved that the bill draft regarding youth combo licenses proceed to pre-drafting. The motion passed unanimously by voice vote. Sen. Vincent, Rep. Bennet, Rep. Reinhart, and Ms. Conradi voted aye by proxy.
- 01:06:43 Mr. Sihler thanked the EQC.

(Break)

AGENCY OVERSIGHT - FIRE SEASON UPDATE

Suppression costs/outstanding federal reimbursements from past fiscal years - Ms. Allen

- 01:30:51 Ms. Allen presented the fire suppression funding update. ([EXHIBIT 4](#))
- 01:33:55 Sen. Keane asked Ms. Allen if the EQC could expect supplemental material regarding the fire season upon the convening of the Legislature in January, 2013. Ms. Allen said that she expected there would be additional information.

Director Mary Sexton and State Forrester Bob Harrington, DNRC

- 01:34:39 Dir. Sexton, Department of Natural Resources and Conservation (DNRC), thanked Sen. Keane for his many contributions to the State of Montana and presented the EQC with a fire summary. ([EXHIBIT 5](#))
- 01:44:11 Bob Harrington, DNRC Forestry Division Administrator, presented the 2012 forest fire season report. Mr. Harrington said it had been a challenging fire season and that he is proud of the work that had been done. ([EXHIBIT 6](#))

Wildfire and air quality - Bob Habeck

- 02:02:07 Bob Habeck, DEQ Air Monitoring, Analysis, and Planning Program Manager, briefed the EQC on DEQ's wildfire smoke and air quality program. ([EXHIBIT 7](#))

Public Comment

- 02:09:04 Jim Savoy complimented the DNRC's handling of the Mission Road Fire. Mr. Savoy suggested greater resources be brought to bear in a fire's initial phase.
- 02:12:51 Frank Crabtree of Cascade echoed Mr. Savoy and asked what DNRC's policy is regarding restoration and revegetation of fire lines.

EQC questions, discussion, and action, if any

- 02:13:54 Rep. Williams asked Mr. Harrington to detail the DNRC's efforts for helping landowners in the wild land urban interface be prepared for fire. Mr. Harrington said the DNRC is engaged in ongoing efforts to that end, primarily with local fire departments in jurisdictions where fires are more likely. Mr. Harrington pointed to the department's "Fire Safe Montana" program, community wildfire plans, and the "fireready.gov" as good resources for homeowners.
- 02:19:06 Sen. Ripley asked Dir. Sexton if there are cost-sharing or restoration funds available for state land leases for those who have lost fences to fire. Dir. Sexton said restoration of damaged fences is included in the fire rehabilitation cost. Sen. Ripley asked Dir. Sexton if she recommended Mr. Crabtree contact Ray Beck.

Dir. Sexton said he could contact Mr. Beck or extension agents with the National Resource and Conservation Service (NRCS).

- 02:22:05 Sen. Keane asked Mr. Habeck if it is correct that his data displays more emissions than tons burned. Mr. Habeck said that he is correct.
- 02:24:09 Sen. Hamlett asked Mr. Crabtree to detail the action taken by the DNRC when his home was in jeopardy during the Mission Road Fire. Mr. Crabtree said his home had been saved by the DNRC's use of helicopters and a skycrane.
- 02:26:29 Sen. Hamlett asked Mr. Savoy if the fire had occurred only on private land. Mr. Savoy said it had. Sen. Hamlett asked for his estimation of the consequences for the area if the DNRC had not responded. Mr. Savoy said the fire would have burned at least ten times as much property and reached Telegraph Mountain in the east.
- 02:27:26 Sen. Hamlett asked Dir. Sexton if the recent Mission Road Fire and cumulative effect of fires would impact water quality and quantity. Dir. Sexton said that although we should remain wary of the immediate effects from fire felt by those living in areas that had been uninhabited, healing takes place with time. Sen. Hamlett asked if increased nutrient levels will impact water quality. Dir. Sexton said those impacts would vary on a case by case basis.
- 02:30:42 Sen. Vincent asked Mr. Habeck if, in addition to his emissions report, he possessed a calculation of mercury levels. Mr. Habeck said he would provide that information.

Review of draft letter to Congressional Delegation re: airtankers - Ms. Stockwell

- 02:32:34 Ms. Stockwell presented the letter regarding the U.S. Forest Service's use of Canadian air tankers that had been requested at the EQC's last meeting.

EQC questions, discussion, and action, if any

- 02:33:13 Rep. Smith moved that the letter be accepted by the EQC and sent to Montana's congressional delegation.
- 02:33:36 Sen. Keane proposed consideration of changing the bill's language by using "we" instead of "I."
- 02:34:24 Ms. Stockwell read the revised first sentence with Sen. Keane's proposed change and added that updated figures could be inserted into the letter's second paragraph.
- 02:35:22 Rep. Smith moved that the letter, including the change proposed by the Chairman and the updated figures, be accepted by the EQC and sent to Montana's congressional delegation.

02:35:45 The motion passed unanimously by voice vote. Rep. Bennett, Ms. Conradi, and Rep. Reinhart voted aye by proxy.

Review of draft letter to Congressional Delegation re: forest land management - Ms. Stockwell

02:37:19 Ms. Stockwell presented a draft letter proposed by Sen. Keane regarding forest land management. ([EXHIBIT 8](#))

02:37:53 Sen. Brenden proposed consideration of changing the bill's language by using "we" instead of "I."

EQC questions, discussion, and action, if any

02:38:19 Sen. Keane moved to send the letter including the proposed corrections. Sen. Keane proposed that the DEQ's chart depicting the amount of tons burned be attached.

02:39:04 Sen. Vincent said he will support Sen. Keane's motion and recommended the mercury value be included in the attached data. Sen. Vincent asked if the EQC would prefer the letter include more specific recommendations for Congressional action.

02:40:59 Rep. Williams asked Mr. Harrington if he is familiar with the Colorado study regarding the effects of timber harvest on fire behavior which found little difference in the results of treated versus untreated forests. Mr. Harrington said he is unfamiliar with the study regarding fuel treatments. Rep. Williams asked Mr. Harrington to explain the science associated with timber management and fire behavior to the EQC. Mr. Harrington said less fuel results in lesser spread and intensity of fire and that in treated, forested stands, such as those at the Hayman fire, the fire drops from the crown to the ground upon hitting the stand, enabling firefighters to catch the fire. Mr. Harrington added that thinning on an insufficient scale such as limited thinning around homes will not be successful due to ember shower.

02:45:36 Sen. Vincent said the problem the committee is trying to address exists in areas in which fire reduction tools were not introduced and fires were suppressed, resulting in potentially catastrophic impact. Sen. Vincent said management will not occur without the help of tools at the federal level.

02:48:26 Rep. Ankney thanked the DNRC and said he would support the motion.

02:50:51 Sen. Keane's motion to send the letter regarding forest land management, with the requested data related to mercury levels, passed 12 - 4 by roll call vote.

02:51:42 Rep. Williams said she does not think Congress should be determining timber policy when Montana's lands are for multiple uses and multiple resource management. Rep. Williams said she looks forward to other opportunities to participate in the dialogue but that the issues holding up timber management are

related to the federal Endangered Species Act (1973), which she does not intend to dilute.

WATER POLICY INTERIM COMMITTEE UPDATE - MR. KOLMAN

- 02:53:00 Mr. Kolman gave an update on the Water Policy Interim Committee (WPIC), which passed three bill drafts for submission to the 2013 Legislature. Mr. Kolman said the WPIC focused on issues involving permitting exempt wells and approved a bill draft which would define the term "combined appropriation." Mr. Kolman said the WPIC approved another bill draft which would establish "stream depletion" zones in areas that have been closed to new surface water appropriation and areas where hydrogeologic study has determined an adverse effect to surface water. Mr. Kolman said the WPIC approved a bill draft similar to SB 299 (2011) pertaining to avulsion. Mr. Kolman said the WPIC was presented with six options for resolution of disputes regarding water rights exempt from filing by the Water Adjudication Advisory Committee.
- 02:59:40 Sen. Hamlett said he had asked the U.S. Forest Service about defensible space around watersheds and found out they had studied watersheds in terms of their use but had not specifically studied them regarding water quantity and quality. Sen. Hamlett said the coming Legislature would examine many water issues and encouraged the EQC to remain engaged.

ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE UPDATE - MS. NOWAKOWSKI

- 03:02:52 Ms. Nowakowski updated the EQC on the activities of the Energy and Telecommunications Interim Committee (ETIC). Ms. Nowakowski said the the ETIC had pre-approved three pieces of legislation for the 2013 Legislature. Ms. Nowakowski said LC 346 adds transparency requirements for rural electric cooperatives' boards of trustees. Ms. Nowakowski said LC 345 will expand the definition of an eligible renewable resource in Montana's renewable portfolio standard (RPS) to include hydroelectric project expansions. Ms. Nowakowski said LC 347 is a study resolution calling for the Legislative Council to analyze the economic and environmental impacts of Montana's RPS. Ms. Nowakowski said the ETIC agreed to weigh in on hydraulic fracturing rules proposed by the Bureau of Land Management (BLM) and wrote a letter urging the BLM to allow states to determine their own rules regarding hydraulic fracturing. Ms. Nowakowski said the ETIC learned about the Public Service Commission's work regarding potential revisions to their practices for requiring utilities to submit resource planning and procurement plans.
- 03:07:11 Sen. Brenden asked Ms. Nowakowski to elaborate on the contents of LC 346. Ms. Nowakowski explained the legislation will require a two thirds majority vote by a rural electric cooperative board of trustees before moving forward with building new generation facilities and before securing long-term contracts.

Public comment on any matter not contained on the agenda and that is within the jurisdiction of the EQC

- 03:08:41 Rep. Mike Cuffe, HD 2, informed the EQC of permit-related impediments to the proposed Montenore Mine Project near Libby. Rep. Cuffe expressed frustration with the permitting process for copper mines and said the permitting process was never intended to kill projects. Rep. Cuffe introduced Eric Klepfer, Montenore Mine Project, and asked the EQC to sign a letter to the DEQ expressing concern over excessive delays to the permitting process. ([EXHIBIT 9](#)) ([EXHIBIT 10](#))
- 03:12:01 Sen. Keane said EQC members could sign the letter individually but the EQC could not take action as a committee since the matter had not been publicly noticed on the EQC's agenda.
- 03:12:53 Mr. Klepfer told the EQC of the Montenore Mine Project's progress. Mr. Klepfer said the ESA consultation process has begun after delay.
- 03:16:13 Sen. Keane asked the DEQ for comment.
- 03:16:25 Warren McCullough, DEQ, said the Montenore Mine Project's struggles parallel those of the Rock Creek Mine, where delays could be blamed on the Forest Service. Mr. McCullough said complications involving federal partners have drawn timelines out interminably. Mr. McCullough said the DEQ hopes to have an environmental impact statement available in draft form next spring.
- 03:19:14 Jim Savoy told the EQC of his project in Great Falls where a fuel spill occurred. Mr. Savoy said he followed the DEQ's guidelines and spent \$140,000 to clean up the site. Mr. Savoy objects to the DEQ's request to dig three test wells on the site, which is less than one acre, and asked the EQC for direction in resolving the matter.
- 03:21:06 Sen. Keane said he would like to follow up on the matter with Mr. Savoy and asked that he meet with Mr. Kolman following the meeting.
- 03:22:01 Rep. Cuffe asked the EQC members to sign the letter to the DEQ individually.

Adjourn

- 03:23:34 Sen. Keane adjourned the EQC.

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