



ENVIRONMENTAL QUALITY COUNCIL

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JOE KOLMAN, Research Analyst
SONJA NOWAKOWSKI, Research Analyst
HOPE STOCKWELL, Research Analyst
CYNTHIA PETERSON, Secretary

MINUTES

Approved September 8, 2008

May 13, 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.

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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

SEN. DAVID WANZENRIED, Chair
REP. CAROL LAMBERT, Vice Chair
SEN. BOB HAWKS
SEN. CHRISTINE KAUFMANN
SEN. DANIEL MCGEE
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
MS. DIANE CONRADI
MR. DOUG McRAE

MR. MIKE VOLESKY

MEMBERS EXCUSED

SEN. DANIEL MCGEE
MR. JEFF PATTISON

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 eliminated item 2 under RCII-11.
- The EQC voted to draft a resolution in support of the MACo resolution as passed on March 3, 2008.

CALL TO ORDER AND ROLL CALL

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

AGENDA

AGENCY OVERSIGHT SUBCOMMITTEE REPORT - Senator Shockley

00:00:42 Sen. Shockley reported three issues came before the Agency Oversight Subcommittee (Subcommittee): Highwood Power Plant air-quality permit; controlled ground water fees; and asbestos fees. Sen. Shockley explained the Department of Environmental Quality (DEQ) issued an air-quality permit to the Highwood Power Plant, and the permit was appealed to the Board of Environmental Review (BER) on the grounds that the air-quality permit was inappropriately issued. The BER is not utilizing the surrogate for PM 2.5. The Subcommittee could not take any action until the BER issues its order. Sen. Shockley explained the Subcommittee will conduct a separate hearing on the issue in June. Sen. Shockley next reported on the controlled ground water fee, which was raised from \$500 to \$1,500, and several members of the public

complained, stating they believed the state should be conducting and paying for the assessment. The Subcommittee also addressed asbestos removal fees, which are now calculated as ten percent of the contract amount. However, contractors do not want to disclose the information contained in private contracts. Sen. Shockley believed the issue should be addressed in the 2009 Legislative Session.

Questions from the EQC

- 00:09:17 Rep. Witte addressed the asbestos removal fee and was adamantly opposed to basing the asbestos removal fee on the cost of the project and suggested the permit should have a flat fee.
- 00:10:04 Sen. Story wondered whether sliding fees are being used and low-cost projects are being subsidized by high-cost projects.
- 00:12:36 Chairman Wanzenried announced that there would be opportunity for public input at the Subcommittee meeting on the Highwood power station.
- 00:13:19 Mr. Everts added the authority for the EQC to intervene in a contested case hearing is limited. Mr. Everts explained the EQC could write a letter to the BER and request that the letter be placed in the record or the EQC could look at drafting legislation.
- 00:14:25 Sen. Story pointed out that for the BER to make a ruling, it would need a legal basis. Mr. Everts stated he would need to review the order and the facts and legal basis before advising the EQC, but emphasized the EQC's options are limited. Sen. Story stated if it was a rule-making process, the EQC would have more authority. Sen. Story wondered how any board could use a criteria in a permit unless it had authority to do so. Mr. Everts explained there is a standard for PM 2.5, and there is a required Best Available Control Technology (BACT) analysis, so there is some basis in law.
- 00:17:14 Mr. Cebull commented on the impending construction deadline and noted it has been almost 12 months since the appeal was filed. Sen. Shockley agreed with Mr. Cebull's concerns about the time line, and stated the DEQ will not, and cannot, extend the construction deadline.
- 00:18:24 Mr. Cebull pointed out the Highwood power plant intends to use Montana coal in the generation facility.

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

- 00:19:15 Sonja Nowakowski, Legislative Research Analyst, reported the Energy and Telecommunications Interim Committee (ETIC) is wrapping up carbon sequestration legislation. The legislation will protect existing oil and gas statutes, establish the dominance of the mineral estate, and will contain reporting requirements. The ETIC is also proposing legislation that will direct the 2009-10

ETIC to conduct an a carbon sequestration interim study that would be focused on liability, cost, and jurisdiction. The ETIC could not move forward on a complete legal framework for legislation until action is taken on the federal level. A draft report will be prepared on carbon sequestration. Ms. Nowakowski submitted a copy of ETIC's findings regarding carbon sequestration (**EXHIBIT 1**).

Questions from the EQC

- 00:22:48 Ms. Conradi asked whether the ETIC addressed terrestrial sequestration. Ms. Nowakowski directed Ms. Conradi to the ETIC's findings in Exhibit 1, page 1.
- 00:24:05 Sen. Shockley commented on carbon sequestration and suggested placing carbon in vegetated matter is not sequestration since vegetation decomposes.

UPDATE ON WATER POLICY INTERIM COMMITTEE ACTIVITIES - Mr. Kolman

- 00:24:58 Joe Kolman, Legislative Research Analyst, Water Policy Interim Committee (WPIC), explained that Sen. Tash was replaced by Sen. Murphy on the WPIC. The WPIC has completed its assigned tasks and is working on its findings and recommendations. A work group has also been formed to develop consensus issues, including the need for more study on ground water resources. There has also been discussion regarding exempt wells (less than 35 gpm, or less than ten-acre fee per year) and the work group believes exempt wells have a place in Montana. The work group also believes there should be incentives for utilizing public water and sewer systems. The work group also identified a need for the Department of Natural Resources and Conservation (DNRC) permitting to be easier and faster. Mr. Kolman explained the WPIC is considering several discussion bill drafts, including clarifying local governments may require community water and sewer systems, establishing a ground water data gathering effort through the Montana Bureau of Mines and Geology (MBMG), and looking at water-quality issues and enforcement issues. Mr. Kolman also reported the WPIC is interested in continuing the WPIC in future interims.

Questions from the EQC

- 00:29:13 Rep. Vincent asked whether the \$1.2 million for the MBMG is generally accepted by the WPIC. Mr. Kolman stated \$1.2 million is what the MBMG has said it needs to study two basins per biennium.
- 00:29:59 Mr. Everts reported Rep. McNutt and Sen. Elliott would like to set up a subcommittee between the EQC and the WPIC to discuss prospective jurisdictional issues. Mr. Everts reported that between 1985 and 1995 there was a WPIC established by the EQC that addressed water quantity-issues. In 1995 the Legislature consolidated numerous interim committees, and the WPIC was integrated into the EQC, and the EQC's membership was increased. Mr. Everts summarized the question as which committee should address water issues. Mr. Everts suggested jurisdiction regarding water issues will need to be defined, and that water quality and water quantity cannot be separated. Mr. Everts urged the EQC to work with the WPIC to develop a plan before the next session.

Public comment

00:34:36 Mary Sexton, Director, DNRC, applauded the effort to have an ongoing interim committee to deal with water quality and quantity issues. Director Sexton believed more interaction between the DNRC and the DEQ has occurred. Director Sexton believed there would be even larger water issues in the future, and the agencies need to know whom to report to. Director Sexton explained the WPIC work group consists of stakeholders in water, and that the meetings have been very beneficial. Director Sexton would like to see the work group continue.

Questions from the EQC

00:37:06 Sen. Story noted that water issues are on the agenda for the EQC. Sen. Story thought the more legislators involved in interim committees the better. Sen. Story recalled the restructuring of interim committees in the 1990s was because of an imbalance in the legislature. Sen. Story saw a need to balance the interim committees.

FIRE SUPPRESSION INTERIM COMMITTEE ACTIVITIES - Leanne Heisel

00:39:57 Leanne Heisel, Legislative Research Analyst for the Fire Suppression Interim Committee (FSIC), reported the FSIC is meeting across Montana and that the Hamilton meeting was well attended. Ms. Heisel explained the FSIC is learning the differences in fire suppression strategies, and that the DNRC's mission is to operate as a full-suppression entity. The FSIC was able to question federal agencies about appropriate management responses for fires that escape initial attack. The FSIC also addressed the importance of fire strategies being communicated to all entities, especially on long-duration fires. A third major theme was fuels reduction and the need to reduce fuels near communities and the wildland urban interface (WUI). The FSIC also toured several fuels reduction projects, one of which was on Sen. Laible's land. The FSIC also learned about the science of using biomass to produce fuel. The next meeting will be in Lewistown and the FSIC will hear from the Missouri River Conservation District and the need to protect watersheds. The FSIC will also discuss volunteer fire fighter recruitment and retention. The FSIC is scheduled to meet in Seeley Lake, Thompson Falls, and Libby. In July and August, the FSIC will attempt to visit fire areas and fire camps.

Questions from the EQC

00:48:55 Rep. Vincent commented on fuel-reduction projects in the urban interface and the cost of those projects. Rep. Vincent cited the past success of stewardship contracting and the need to maintain mills to deal with merchantable timber. Rep. Vincent saw a need for an atmosphere of sustained yield and believed it would take radical solutions to address radical issues.

00:52:32 Rep. Bixby asked Ms. Heisel if the tribes are being included in the fire suppression discussions. Ms. Heisel confirmed the tribes have been involved.

- 00:53:23 Sen. Kaufmann identified part of the problem as the build up of debris over a hundred years, and continuing the practice of suppressing wildland fires that everyone acknowledges is part of the problem. Director Sexton agreed, but added given the conditions in the forests, it is a question of how much money can be spent. Director Sexton also noted the safety factor given the conditions. Additionally, there will still be fires and homes will still be threatened. Director Sexton identified the lack of thinning of forests as a factor.
- 00:55:26 Rep. Vincent agreed with Sen. Kaufmann's comment, but suggested where the fuel loads are catastrophic, fuels need to be reduced before reintroducing fires. Rep. Vincent reiterated there is no market for the lumber once it is thinned. Sen. Kaufmann agreed with Rep. Vincent. Rep. Vincent also cited the presence of air inversions and explained when the Forest Service wants to conduct controlled burns, they cannot because of poor air quality. Rep. Shockley addressed the WUI and suggested using controlled burns in May instead of waiting until Mother Nature starts fires in August.
- 00:59:36 Sen. Hawks addressed opposition to fuel reduction in the WUI and asked if the opposition was centered around heavy mechanical logging practices and the affect on the terrain. Rep. Vincent responded opposition is mainly from one or two groups that have a zero cut philosophy.
- 01:02:29 Rep. Lambert addressed Sen. Laible's past efforts to reduce fuels and wondered about the effectiveness of his measures. Ms. Heisel was unsure of the timing of Sen. Laible's fuels reduction and the fire suppression efforts.
- 01:03:41 Mr. Volesky explained the state's fire fighting policy consists of initial attack because of the drought and current forest conditions.

Public Comment

- 01:05:09 Director Sexton summarized the main question as what to do with development in the WUI and whether more regulatory efforts are needed or whether voluntary measures could be taken. Director Sexton explained that zoning is not a popular topic in Montana and part of the \$40 million appropriation was utilized to hire additional engine and helitack crews.

WATER ADJUDICATION PROCESS OVERSIGHT

Department of Natural Resources and Conservation Update - Director Sexton

- 01:17:08 Director Sexton submitted and reviewed "DNRC's Report to EQC, HB 22 Adjudication Progress, May 13, 2008" ([EXHIBIT 2](#)). Director Sexton also submitted "Administration of Water Court Decrees" ([EXHIBIT 3](#)).

Questions from the EQC

- 01:26:54 Ms. Conradi requested an update on the negotiations with the Confederated Salish and Kootenai Tribe (CSKT). Director Sexton reported there have been

many meetings with the CSKT because the Compact Commission sunsets in two years.

01:27:58 Sen. Story asked whether the enforcement actions listed for 2008 include the actions from 2005. Jim Gilman, Bureau Chief, Water Adjudication, responded the total is cumulative. Sen. Story requested that a more detailed map of the different basins be provided to the EQC members. Mr. Gilman agreed to provide a more detailed map. Sen. Story asked whether information regarding the administration of water court decrees is generally available to the public. Director Sexton submitted "Water Right Adjudication in Montana" ([EXHIBIT 4](#)).

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

01:32:25 Bruce Loble, Chief Water Judge, discussed "Water Court Basin Activity" ([EXHIBIT 5](#)). Judge Loble stated he expected more public attendance at the Tongue River meeting. Judge Loble stated a Continuing Legal Education seminar was held in Miles City. The Big Hole River objection deadline expired on March 31, and there were objections to 1,465 claims. The court is finalizing the filing of documents with U.S. Forest Service Compact and will hold six public meetings.

Questions from the EQC

01:38:28 Chairman Wanzenried wondered why there was such a low turnout at the Upper Tongue River meeting. Judge Loble hypothesized the rainy weather may have been responsible for the low turnout. Judge Loble suggested giving more public notice prior to the next meeting.

01:39:28 Rep. Lambert suspected the low turnout may have been due to a recent snowstorm and the onset of calving season.

01:40:06 Rep. Bixby stated she did not receive notice of the meeting. Judge Loble stated notice was given to every water user in the Tongue River drainage and notice was also published in the newspapers. Rep. Bixby asked Judge Loble to let her know when the next meeting would be held.

Public Comment

No public comment was offered.

STATE WATER PLANNING PROCESS

Director Sexton and DNRC Staff

01:42:39 Director Sexton reported Montana had an active water planning process until the mid-1990s. Director Sexton explained how water issues were not in the forefront and adjudication came to a halt, and the state focused on watershed and basin groups. Director Sexton explained how drought and development have made a large impact during the past ten years. Director Sexton introduced Rich Moy,

Water Resource Division, DNRC, who gave a PowerPoint presentation entitled "The State Water Plan" ([EXHIBIT 6](#)). Mr. Moy also reviewed the Drought Management section to the Montana Water Plan ([EXHIBIT 7](#)).

Questions from the EQC

- 02:17:05 Sen. Hawks thanked Mr. Moy for his report. Sen. Hawks stated he is pressured to address in-stream flows and asked Mr. Moy whether the in-stream flow leasing provisions in the law met the intent of Water Resource Act of 1967. Mr. Moy responded no. Mr. Moy reported there are over 200 dewatered streams in the Missouri River basin. Sen. Hawks complimented Mr. Moy and stated anything Mr. Moy could share in the future would be appreciated. Sen. Hawks asked whether the current WPIC is plowing new ground or operating with the benefit of what Mr. Moy presented. Mr. Moy believed the WPIC is plowing new ground and tackling tough issues. Sen. Hawks addressed the history of the 35 gpm rate for exempt wells and wondered if the level was still appropriate. Mr. Moy explained the rate was established for irrigation projects and was not a consideration for population growth and subdivisions. Mr. Moy believed the 35 gpm rate is still reasonable, but thought the ten-acre feet standard should be lowered.
- 02:21:40 Rep. Dickenson requested clarification regarding challenges. Mr. Moy reiterated the importance of resolving resolve issues between recreation and consumptive water users.
- 02:22:53 Rep. Lambert requested a hard copy of Mr. Moy's presentation. Mr. Moy agreed to provide a hard copy.
- 02:23:35 Sen. Story thought Mr. Moy gave a good presentation and spoke about his experience with the state water plan following the drought of 1988. Sen. Story agreed there is a need to figure out how to protect those people who have existing water rights.
- 02:26:06 Sen. Shockley understood that in Idaho the state funds litigation if your water right is being abused. Richard Moy was unaware of that provision in Idaho, but clarified that Idaho is facing tough issues and making tough decisions regarding water.
- 02:27:56 Ms. Conradi identified one issue as the relationship between the WPIC and the EQC and asked Mr. Moy for his recommendation. Mr. Moy suggested the WPIC should be a standing subcommittee of the EQC.
- 02:29:30 Rep. Dickenson commended Mr. Moy for his years of service and wished him well. Rep. Dickenson asked Mr. Moy whether he would still be available as a resource. Mr. Moy agreed he would be available.
- 02:30:30 Chairman Wanzenried noted that in the 1990s Montana stopped doing water planning, and asked whether water planning is currently being done. Director Sexton responded Montana is not conducting planning, and is utilizing watershed groups. Currently, Montana is playing catch up and reacting to problems such as

recent court decisions and drought issues. Director Sexton stated it is expensive and time consuming to conduct a formal water planning process.

- 02:32:21 Chairman Wanzenried wondered what resources would be required to become proactive on water planning. Director Sexton responded the DNRC's resources are currently being utilized for litigation and permitting and summarized the question as where to place the DNRC's resources. Chairman Wanzenried asked whether the current administration would continue to hold the status quo. Director Sexton noted the Reserved Water Rights Compact Commission would sunset soon, and that the DNRC would like to take some of those staff when they become available to assist with long-term planning issues. Additionally, the DNRC would like to address enforcement issues.
- 02:36:14 Ms. Conradi addressed Mr. Moy and asked if under the existing plan, a water planning process would be starting from square one or whether the old plan would provide the basic framework. Mr. Moy explained the process exists, and the question is how to take an issue through the process. Mr. Moy explained addressing the individual needs in basins will take more money and suggested the question is whether Montana desires to be proactive or reactive.
- 02:38:13 Sen. Hawks saw a need for more legislators to be involved in the process and asked whether the working groups come under the water subcommittee. Mr. Moy agreed there could be a marriage between the EQC and the DNRC on water planning. Sen. Hawks thought because it is a contentious issue, Montana would probably be better served not to have policy flowing directly out of the DNRC, but be a broader group with the DNRC intimately involved in the process. Mr. Moy stated that the ultimate decision previously lied with the DNRC. Sen. Hawks saw a need to have the ability to bring back seasoned people who have the history and understanding of the issues. Mr. Moy agreed that seasoned and experienced individuals are still accessible.
- 02:41:58 Sen. Story addressed Director Sexton's suggestion of making a change in direction and asked about the effectiveness of local watershed groups. Director Sexton suggested a need for a combination of both local and state involvement. Director Sexton believed the effectiveness of local watershed groups is yet to be determined, and that there needs to be specific reporting criteria to determine the success of watershed groups.
- 02:44:58 Mr. Volesky summarized the question as what constitutes water planning because the issue has changed over the years. Mr. Volesky believed policy has not changed over the years by and large, and that good information is needed for planning. Mr. Volesky saw a need to choose a philosophical approach. Mr. Volesky saw a need for decisions to be made at the local level, and that the state should support studies.
- 02:48:00 Chairman Wanzenried suggested the EQC should supplement and advocate for water planning. Mr. Everts provided a brief history of past EQC involvement regarding water planning. Mr. Everts re-emphasize the past proactive role of the EQC and that the issues continue to resurface. Chairman Wanzenried requested

a panel presentation regarding how to assist the DNRC in addressing water issues.

Public Comment

02:53:11 Bruce Kirshaw, Helena, submitted "Global Warming, scientific consensus or pathological political hearsay" ([EXHIBIT 8](#)).

HJR 57 CONSERVATION EASEMENT/TRUST LAND

Review of Draft HJR 57 Report - Mr. Kolman

02:53:46 Joe Kolman submitted "Trust Land Management, An analysis of conservation easements and other uses of state trust land" ([EXHIBIT 9](#)).

Questions from the EQC

02:55:52 Rep. Lambert commented she was pleased with the report and thanked Mr. Kolman for his work.

02:56:32 Sen. Story noted if the DNRC were to sell a conservation easement in perpetuity, the money would go into the permanent trust. Sen. Story wondered whether that would be the case if the conservation easement were leased for a term of years.

02:57:15 Director Sexton addressed Sen. Story's question and explained if the DNRC sells an easement, some of the money goes into permanent fund, and when a conservation easement is leased, it goes into the DNRC's revenue. Sen. Story recalled that with conservation easements for fifty years, the money did not go to the trust. Tom Shults explained that with a permanent disposition, the money goes into permanent fund. If a the easement is for a term, the money goes into an INI distribution. Sen. Story requested that the difference in the distribution of funds be clarified in the report. Mr. Kolman wondered whether the DNRC would sell a conservation easement for a term of years when the Land Board could issue a lease.

03:01:34 Ms. Conradi identified the primary difference as the nature of the property interest.

03:02:05 Director Sexton provided an additional explanation and stated there are three different tools which are used, including a license, a lease, and an easement. Director Sexton stated deed restrictions are also used. Director Sexton suggested those tools could be defined and refined to determine which tool would be the best.

03:03:18 Mr. Kolman stated he would draft findings based on Sen. Story's suggestion and incorporate the finding into the report.

Public Comment

- 03:03:53 Director Sexton thanked the EQC, Mr. Everts, and Mr. Kolman for their efforts. Director Sexton concurred with the draft findings. Director Sexton submitted a map entitled "State Trust Lands Bounded by Conservation Easements (**EXHIBIT 10**). Director Sexton suggested there was an opportunity for the state to be proactive in working with beneficiaries in gaining more income by working with landowners, advocacy groups, and governmental entities.
- 03:08:35 Rep. Lambert asked whether there was a publication depicting who has the easements. Director Sexton directed Rep. Lambert to the local county clerk and recorder offices. Mr. Kolman recalled a bill in the 2007 session which directed the Natural Resource Information Service (NRIS) and the Department of Revenue to have a listing which will be made public later this year.
- 03:10:37 Sen. Story noted the DNRC printed its map off a database. Mr. Shults agreed the information is on the NRIS database. Sen. Story addressed Glenn Marx, Montana Association of Land Trust, and asked whether he believed someone would be willing to pay the state for a conservation easement. Mr. Marx stated the Montana Association of Land Trust would be glad to talk to the DNRC, and that there is a conservation value for lands in the northeast corner of Montana.
- 03:13:23 Mr. Marx commented that in the 2005 and 2007 legislative sessions, there were bills introduced regarding conservation of state lands, and that there was misinformation and confusion. Mr. Marx thought the report would help reduce those concerns. Mr. Marx complimented the EQC and staff.

ADDITIONAL COUNCIL DISCUSSION ON THE CLIMATE CHANGE STUDY (if necessary)

- 03:15:46 Chairman Wanzenried stated his desire to continue with discussion regarding whether the public education component (CC-4, Exhibit 2, May 12, 2008, Minutes), would promote an understanding of what individuals could do to conserve energy.
- 03:17:03 Rep. Dickenson explained the recommendation would increase public awareness that: (1) the climate is changing; (2) the change is impacting lives; (3) people are affecting the climate change; and (4) what can be done to mitigate the climate change.
- 03:18:22 Rep. Bixby emphasized the importance of education and stated Montanans have the right to the education, so they can make informed decisions.
- 03:21:35 Sen. Hawks stated he listened to a presentation by Mr. Freeman, a man who spent 30 years in the utility business. Sen. Hawks believed state government needs to provide a credible voice to the public and gather ideas in a succinct fashion, so people can understand the issues.

- 03:23:27 Sen. Shockley asked how to get a base load with no coal, oil, gas, or nuclear power. Sen. Hawks responded that new emerging technology from solar and wind will be enough to produce the needed base load.
- 03:24:40 Rep Vincent agreed there is a need for education regarding consumptive choices. Rep. Vincent disagreed with the premise that climate change is occurring and is man caused. Rep. Vincent would not agree to teaching that premise in public schools.
- 03:26:56 Mr. Cebull agreed with the need for education and awareness as to where energy comes from. Mr. Cebull was also concerned about providing education when there is no ability to question. Mr. Cebull did not agree with the assumption that the climate change was man caused.
- 03:28:28 Rep. Lambert agreed with Mr. Cebull and Rep. Vincent that providing education regarding climate change would be redundant since the information is available from other sources.
- 03:29:51 Rep. Dickenson moved the EQC request staff to prepare legislation which would direct the DEQ to implement an outreach program with an identified funding source. Rep. Dickenson's motion failed 8-8 by roll call vote.
- 03:32:38 Jim Nolan, Department of Public Health and Human Services (DPHHS), addressed the Low-Income Energy Assistance Program (LIEAP) and the weatherization program. Mr. Nolan explained LIEAP assists a household in meeting its immediate heating needs, and the weatherization program decreases energy consumption in the long term. Mr. Nolan estimated LIEAP will serve approximately 19,000 households in the upcoming heating season, and weatherization will serve approximately 2,000 households. Mr. Nolan explained DPHHS's efforts to mix and match the two services.
- 03:34:04 Rep. French asked for an explanation of HB 41. Mr. Nolan explained HB 41 provided the ability to access an energy conservation account funded by oil overcharge money. Rep. French asked for clarification that the funding did not affect LIEAP and went strictly to weatherization. Mr. Nolan agreed. Mr. Nolan confirmed the funding for LIEAP consists of federal money and money from the utility companies.
- 03:36:47 Rep. Witte asked Mr. Nolan to explain the availability of the interest from the \$1.6 million. Mr. Nolan agreed and stated the interest was spent as time passed. Rep. Witte asked whether DPHHS will be looking for replacement sources for the \$1.6 million. Mr. Nolan responded the Governor always requests money from general fund. Rep. Witte asked whether the \$1.6 million would be included in the budget for DPHHS. Mr. Nolan responded the \$1.6 million is not part of DPHHS's base budget and was a one-time authorization.
- 03:39:35 Chairman Wanzenried agreed in order to spend the interest, authorization would be needed. Rep. Witte commented the \$1.6 million has been released to be spent and suggested there would be another request for one-time only funding.

Mr. Nolan agreed there would be a request to assist low-income households with energy bills.

- 03:40:50 Rep. French wondered how much the interest was per year. Mr. Nolan responded the amount was minimal depending on the interest rate and recalled the amount was between \$50,000 and \$100,000 per year.
- 03:41:42 Ms. Nowakowski sought clarification for RCII-11 and asked whether the recommendation included an overall funding increase for LIEAP.
- 03:42:47 Sen. Story commented he did not see LIEAP as being part of the EQC's work plan.
- 03:43:17 Rep. Dickenson addressed RCII-11 and low-interest loans for weatherization, and stated she was concerned about the state loaning money on a home that could ultimately end up in foreclosure. Rep.,. Dickenson did support tax incentives or credit programs for landlords and renters for weatherization and requested the EQC staff to draft legislation. Sen. Story recalled the EQC had already agreed to review Sen. Laslovich's past legislation.
- 03:45:38 Rep. Dickenson addressed Rep. Vincent and Rep. Witte and asked for their thoughts on AFW-8. Rep. Witte stated he would not support the recommendation. Rep. Vincent disagreed with Rep. Witte and stated the government is already in the conversation. Rep. Vincent believed biomass is a good venue for forest fuel reduction and conservation. Rep. Vincent saw a need for infrastructure to capture capital investments. Rep. Vincent stated he would like to talk about a resolution from the EQC directed to the federal delegation urging support of the FSIC and assistance for local groups to gain access to the forest to conduct fuel reduction.
- 03:53:48 Chairman Wanzenried suggested the EQC discuss AFW-8 and AFW-7. Sen. Shockley agreed there are too many trees and supported the idea of biofuel. Sen. Shockley supported the use of fibrous wood to heat schools and encouraging the use of biomass to heat public buildings. Ms. Nowakowski stated the EQC could direct additional funding for the DEQ's fuels for schools program.
- 03:55:46 Sen. Story stated there would need to be house bills submitted to appropriate money. Sen. Story suggested tapping into coal money since it already has an existing revenue stream.
- 03:57:09 Upon question from Chairman Wanzenried, Ms. Nowakowski stated she did not know what the funding source was for the fuels to schools program.
- 03:57:26 Lou Moore, DEQ, stated the fuels to schools program's primary funding source is federal with some dollars from the state, and the federal funding has been declining.
- 03:58:09 Rep. French addressed AFW-7 and asked whether it would be appropriate to recommend a pilot project. Rep. Vincent agreed. Rep. Vincent spoke about the

inversion problem, which results in people not being able to burn. Rep. Vincent thought it would be best to burn in the cleanest fashion.

- 04:00:57 Sen. Story suggested pilot projects in research and development would be a step in the right direction. Sen. Story believed state agencies are not geared to do pilot projects. Sen. Story explained how burning wood results in a high carbon-to-hydrogen ratio, and that biomass acts as a convertor.
- 04:04:01 Rep. Witte stated that the Glacier High School in Kalispell has a new boiler that runs on wood chips, but has difficulty obtaining the wood chips. Rep. Witte commented that reforestation is stated once the trees are planted, what are you going to do with the wood.
- 04:06:40 Sen. Hawks asked Sen. Shockley to comment on decomposition of forests versus burning. Sen. Shockley stated if wood is burned efficiently, it will emit the same amount of CO₂. Likewise, if wood is allowed to decay, it produces methane, which is more potent than CO₂.
- 04:08:41 Sen. Story noted the EQC's lack of scientific knowledge and suggested that the EQC recommend pilot projects in research and development, and he also suggested a need to know the criteria for renewable resource grants.

(LUNCH)

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

- 05:11:18 Rep. Witte stated a desire to address the Highwood generating plant and the Board of Environmental Review (BER). Chairman Wanzenried stated the Agency Oversight Subcommittee would be meeting to address the issue. Chairman Wanzenried emphasized the EQC has limited jurisdiction over contested case hearings.

KALISPELL POLE AND TIMBER, RELIANCE REFINERY, AND YALE OIL CORPORATION SITE

DEQ Staff Update on the record of decision process and litigation

- 05:13:36 Sandi Olsen, Administrator, Remediation Division, DEQ, provided a history of the Kalispell Pole and Timber, Reliance Refinery, and Yale Oil Corporation Site (KPT). Ms. Olsen stated the Record of Decision (ROD) would be released shortly. The DEQ and the DNRC will be seeking budget authority for the DNRC to fulfill its responsibility at the KPT site. Ms. Olsen stated the DEQ is in final briefing and potential oral argument in the litigation with the Burlington Northern and Santa Fe Railway Company (BNSF). Ms. Olsen stated the DEQ may seek supplemental funding from the Legislature to complete timely cleanup of the site since the current litigation could delay the cleanup.

Public Comment

- 05:18:29 Dave Smith, Environmental Remediation, BNSF, is responsible for work at the KPT site. Mr. Smith BNSF has been conducting investigation and remediation at the KPT site since the 1990s. Mr. Smith gave a presentation on measures taken by BNSF at the KPT site.
- 05:25:52 Dean Schwank, Schwank Enterprises in Kalispell, owns three acres at the KPT site. Schwank Enterprises entered into an agreement with the DEQ for two percent liability and agreed to participate in the remedial action. Mr. Schwank reported he has paid over \$56,000 to date. Mr. Schwank stated his company could not pay the \$560,000 that constitutes two percent of the \$28 million. Mr. Schwank noted two other parties were excused, but Schwank Enterprises was not given the same opportunity. Mr. Schwank stated he would like to have the opportunity to explore the BNSF's less expensive proposal.
- 05:28:49 Jim Patrick, Kalispell City Manager, stated he is most anxious to work with both the DEQ and the BNSF to resolve the cleanup as quickly as possible, so the land can be used for industrial site purposes while still protecting the people and the environment.

Questions from the EQC

- 05:30:43 Rep. Witte stated he has seen real trouble on the ground since the KPT site is literally in his backyard and depicted the KPT site as a blight on Kalispell. Rep. Witte stated at present there is still no cleanup plan, and a court decision will not be issued until the fall. Rep. Witte believed the KPT site cleanup needs a start and a completion date set. Rep. Witte asked that discussion of the KPT site be placed on the EQC's September agenda.
- 05:33:37 Sen. Shockley addressed Ms. Olsen and noted the trial was a month and a half ago and wondered why the issues are being briefed after the trial. Cindy Brooks, attorney for the DEQ, clarified Judge Sherlock requested post-trial briefing, and may request further oral argument before taking the matter is taken under advisement. Ms. Brooks emphasized the complicated nature of the case.
- 05:35:41 Sen. Story asked whether the DEQ has a preferred solution. Ms. Olsen responded the DEQ submitted its preferred plan and obtained public comment. The DEQ is evaluating the public comment and adjusting the proposed remedy. Ms. Olsen stated the preferred alternative does not include the on-site treatments referred to by the BNSF. However, the proposed plan and final decision will include components of BNSF's proposals. Sen. Story noted some of the PRPs have been released and wondered why others were not. Cindy Brooks stated there were a number of factors listed in the superfund statutes that the DEQ analyzed. Ms. Brooks stated there were other considerations for Schwank Construction. Ms. Brooks was unable to provide many details since the case is involved in ongoing litigation. Ms. Brooks directed Sen. Story to the settlement documents on the DEQ's website and the different analysis that was applied to different defendants. Ms. Brooks stated Schwank Enterprises was one of the first

settlement agreements. Ms. Brooks disagreed with Mr. Schwank's characterization that some defendants got out for nothing and disagreed that the settlement agreements had no value.

05:43:22 Sen. Shockley noted if the two companies that were dismissed were still in the lawsuit, the property could have been used. Ms. Brooks stated the DEQ evaluated risk management in deciding whether to settle with the companies. Sen. Shockley stated if the two parties had lost their portion of the lawsuit, the parties would have had to participate with the other PRPs. Ms. Brook agreed, but stated there were other factors that were considered.

05:45:01 Rep. Witte asked whether Clingler Lumber and Montana Mocha were still defendants and were assigned a percentage of liability. Ms. Brooke clarified settlement agreements had not been reached at the time of public comment on the proposed plan.

UPDATE ON RECENT DISTRICT COURT GRAVEL PIT PERMITTING DECISION AND THE RAMIFICATIONS OF THIS DECISION FOR THE ENVIRONMENTAL REVIEW AND PERMITTING PROCESS

05:47:41 John North, DEQ, submitted and reviewed "Gravel Lawsuits" ([EXHIBIT 11](#)). Mr. North explained the cases arose because of the mandatory timeframe within the permitting statute, a requirement in the Montana Environmental Policy Act (MEPA), the fact the DEQ has only four staff to regulate open-cut mines in the state of Montana, and county zoning. The DEQ has 30 days, with a possibility of a 30-day extension, to review the application to determine whether the application is acceptable. Mr. North explained a writ of mandamus is a special lawsuit where, if a court finds a public officer failed to perform a clear legal duty, the court can ask them to perform. Mr. North identified six gravel pits that were the subject of the lawsuits. The court ordered writs requiring DEQ to issue the gravel pit permit applications. The DEQ moved for reconsideration and requested a stay of execution of judgment, which was denied. Permits were issued for three gravel pits, and the permits were conditioned upon a ruling from the court on the motion for reconsideration. Mr. North also identified lawsuits filed by landowners alleging the permits were invalid since no Environmental Assessment (EA) was performed, there was no opportunity for public comment, and there was a violation of the landowners' constitutional right to a clean and healthful environment. The landowners' motion for a temporary restraining order and preliminary injunction was denied.

06:00:02 Richard Opper, Director, DEQ, explained that gravel pits have become an issue in high-growth areas. Director Opper stated the DEQ is in an awkward position because they are required to issue gravel pit permits without Environmental Assessments or opportunity for public comment because the DEQ does not have enough resources to meet the statutory time frames. Director Opper suggested the time lines contained in the Open Pit Mining Act are not realistic. Director Opper explained the DEQ is not comfortable issuing permits without an EA. The DEQ attempted to obtain more staff the last two Legislative Sessions, but was unsuccessful. Director Opper stated while the DEQ is not blameless, high growth

in the state has added to the DEQ's workload. Director Opper identified the Resource Indemnity Trust (RIT) Fund as the income source for the program, but depicted the funding as not being reliable. Director Opper suggested a need to look at the DEQ processes to see what can be done differently to issue permits quickly while still protecting the environment. Director Opper identified responding to voluminous public comment as time consuming. Director Opper stated the DEQ is currently undergoing a performance audit and stated he believed the audit would yield very good suggestions.

Questions from the EQC

- 06:06:23 Mr. Volesky asked for a summary of the growing number of permit applications over the years. Neil Harrington, Chief of Industrial Energy Minerals Bureau, DEQ, could not give specific numbers, but estimated there were approximately 100-125 new permit applications over the last several years and in 2007, the DEQ approved about that same number. While the number of pending permits has remained unchanged, the high-profile nature of permit applications has grown dramatically and the issues have become extremely complex.
- 06:09:10 Mr. Volesky asked whether ongoing monitoring or maintenance was also required. Mr. Harrington agreed there is a backlog of 60-70 pending permits that DEQ is responsible for reviewing, and that some permit applications are several years old.
- 06:10:55 Sen. Shockley addressed Mr. North and asked whether nuisance is a valid complaint to opening a gravel pit. Mr. North responded the DEQ has regulatory authority under the Open Pit Mining Act, and it includes protection of ground water and air, and the DEQ has authority to regulate hours of operation and noise. Sen. Shockley asked whether landowners would have a basis for a lawsuit for nuisance. Mr. North agreed landowners could file a nuisance lawsuit but could not say whether the landowners would prevail.
- 06:12:46 Rep. Vincent asked Director Opper about the DEQ's ability to contract out work and whether contracting had anything to do with the recent court decisions. Director Opper stated the decisions were not a result of contracting. Rep. Vincent commented that the DEQ's resources would be better used to address high-profile cases.
- 06:14:55 Mr. Cebull asked about the current status of the Gallatin County gravel pits and whether the gravel pits are in operation. Mr. North responded the permits would allow the gravel pits to commence operation immediately but did not know whether they had broken ground. Mr. Cebull suggested there were competing property rights and asked what the situation is as far as gravel ownership and whether gravel is protected like other mineral ownership. Mr. North responded gravel rights are not normally separated from the surface.
- 06:17:28 Sen. Shockley agreed the DEQ is underfunded and understaffed, and that on-site staff are always underpaid. Sen. Shockley asked whether the DEQ had

thought about hiring contractors. Director Opper agreed that was one of the recommendations that came from HJR 34.

06:18:28 Rep. Dickenson asked what legislative session set the time line in cement. Mr. North responded it was in the 2007 session, but that a shorter timeframe has been contained in the Open Pit Mining Act since 1971. Rep. Dickenson asked whether changes to MEPA also affected the permitting process. Mr. North added the 2003 Legislature adopted a bill that implemented the right to a clean and healthful environment in the Constitution.

06:22:11 Rep. Dickenson asked whether placing hard and fast deadlines with no opportunity for extensions and no funding for staff put the DEQ in a difficult situation. Mr. North explained the DEQ attempted to obtain additional funding for staff the last two legislative sessions but was unsuccessful. Rep. Dickenson asked Director Opper what the resistance was to a fee for gravel pits to fund the DEQ so permits could be expedited. Director Opper responded the Montana Contractors' Association did not oppose the fee, but the counties were opposed to an annual fee. Rep. Dickenson wondered what would occur if one court decision stated the DEQ must issue the permit and another court decision stated the DEQ cannot issue the permit. Director Opper believed the DEQ would be placed in an impossible position and, if he had to make a choice, the DEQ should only issue defensible permits.

06:25:18 Sen. Story asked whether all the DEQ's positions are filled. Director Opper agreed all the positions are filled and emphasized that staff also has to oversee ongoing compliance, as well as reclamation bond release. Sen. Story asked whether the DEQ requested any expansion for the program in the upcoming budget process. Director Opper responded the DEQ did not request additional resources since the state will be in a belt-tightening mode during the upcoming session. Sen. Story wondered whether there was a priority system utilized for issuing permits. Director Opper responded that priority has been given to controversial gravel pits in urban areas.

06:28:39 Sen. Story addressed Mr. Harrington and asked whether the three gravel pits in Gallatin County consisted of new pits or expansion of existing operations. Mr. Harrington responded they were mostly new pits. Sen. Story asked whether the companies were new companies or existing companies. Mr. Harrington responded two of the companies were new. Sen. Shockley suggested Judge Sherlock was harsh because of the zoning situation and asked whether this case would be distinguishable from other cases. Mr. Harrington speculated Judge Sherlock would rule the same way regardless of whether zoning was an issue, and Judge McCarter had indicated zoning was not the issue.

Public Comment

06:32:26 Carey Hegreberg, Montana Contractor's Association (MCA), represents the sand and gravel industry. Mr. Hegreberg stated he knew they were headed for a train wreck with the gravel pit issue. Mr. Hegreberg cited a backlog of 250 permits at the DEQ and that open cut mine permits did not receive priority. Mr. Hegreberg

stated there are approximately 1,100 active open cut mining permits in Montana and approximately 600 permits are publicly owned. Mr. Hegreberg explained that legislation was introduced in 2007 to help fix the backlog. The MCA has an intense interest in working with the Legislature and counties to identify land use issues with gravel pits, and proposed solutions will be presented to the 2009 Legislature. Mr. Hegreberg cited the good-neighbor policy adopted by the MCA and offered to make a copy of that policy available to the EQC.

06:41:13 Rep. Jill Cohenour, HD 78, stated her constituents are incredibly concerned about gravel pit development in East Helena since a gravel pit is located in the middle of three large subdivisions, approximately 1,000 feet away from homes. Rep. Cohenour stated gravel pit submitted an insufficient application to the DEQ. A public meeting was held with the DEQ and concerned citizens asked for an extension to submit public comment. Rep. Cohenour explained that daycares are located along the gravel pit boundaries, and that the gravel pit is located in the middle of the ASARCO superfund site. Rep. Cohenour stated the DEQ's answers failed to make people feel comfortable, and that the applications were silent as to mitigation. Rep. Cohenour explained one subdivision community well is located 100 feet away from the boundary of the gravel pit. Concerned citizens requested information before making public comment. Rep. Cohenour also cited errors that were contained in the application. Rep. Cohenour stated the permit applications are being changed and added to daily resulting in a need for constant monitoring. Rep. Cohenour was concerned about a process that does not provide people with an opportunity to fully engage their government and communities. Rep. Cohenour asked the EQC to address how the process can work better for everyone and look for solutions. Rep. Cohenour noted the gravel pit issue is also being addressed by the Water Policy Interim Committee (WPIC).

06:50:13 Jean Riley, East Gate Water and Sewer Association, reiterated the main drinking water well for one subdivision is located within 100 feet of the gravel pit property boundary, and the gravel pit plans on mining within 30 feet of property boundaries. Ms. Riley expressed concern about increased traffic and large trucks. Ms. Riley emphasized a need to protect the subdivision residents. Ms. Riley stated until the public knows what is planned, the public has no recourse and cannot provide input. Ms. Riley stated contaminated soil will be within five feet of the groundwater and was concerned a contaminated plume could infiltrate the public water supply system.

Questions from the EQC

06:55:24 Sen. Shockley asked Rep. Cohenour whether the subdivision residents had investigated filing a nuisance cause of action. Rep. Cohenour identified difficulties with the bonding requirement. The homeowners brought an injunction against issuing the permit and were told it was premature since the permit had not been issued. Rep. Cohenour requested the DEQ to issue a supplemental draft EA and include all the new information. Rep. Cohenour stated the Water and Sewer Board and citizens have spoken with an attorney.

- 06:57:10 Sen. Shockley asked Mr. North whether the DEQ is accepting applications that are not complete. Mr. North explained the DEQ does an application review and makes a determination before it issues a permit. Permits are not issued unless the DEQ believes the application is acceptable. Sen. Shockley stated the clock should not start running until the application is complete. Mr. North stated under the Open Cut Mining Act, the thirty-day time line begins when an application is received regardless of whether the application is complete. Sen. Shockley commented if an application is not complete, the application should be sent back and the process started over. Mr. North agreed if the application is not complete or adequate, it is sent back and the process starts over. Sen. Shockley wondered how long it takes the DEQ to decide whether an application is complete. Mr. North could not provide a specific answer.
- 06:59:36 Sen. Kaufmann addressed Mr. Hegreberg and asked why legislation to address the problem did not pass during the last session. Mr. Hegreberg responded one half of the currently permitted operations are publically owned and less than half were private. The MCA was not willing to accept the permitting costs for running the DEQ's program for all entities. Sen. Kaufmann addressed Director Opper and the suggestion that the DEQ contract with additional people to get caught up on permitting and asked Director Opper what the advantages of contracting would be. Director Opper believed contracting would be a good way to handle peaks in workload without adding FTEs. Sen. Kaufmann asked Director Opper to identify the disadvantages of contract services. Director Opper explained a tremendous amount of staff time would still be required to provide oversight and that it is difficult to find good contractors.
- 07:02:52 Rep. Witte addressed Director Opper and stated the Gallatin County Commissioners adopted a plan requiring a conditional use permit for a gravel pit. Rep. Witte asked whether East Helena is zoned as part of Helena. Mr. North explained East Helena is a separate incorporated area, but the gravel pit area is outside the city limits and lies within Lewis and Clark County. Rep. Witte believed that cities and counties would like the state legislature to pass laws instead of having to deal with local issues. Rep. Witte noted the county commissioners could implement zoning regulations. Director Opper commented the DEQ is attempting to work better with the counties.
- 07:06:22 Mr. Everts stated there will be a performance audit on the Open Cut Mining program that will be presented to the Legislative Audit Committee. Mr. Everts has asked the audit staff to provide a briefing to the EQC in July.

(BREAK)

ADDITIONAL COUNCIL DISCUSSION ON CLIMATE CHANGE STUDY (IF NECESSARY)

- 07:21:35 Chairman Wanzenried directed the EQC members to Ms. Nowakowski's summary of draft legislation and action. Ms. Nowakowski requested clarification.
- 07:23:24 Rep. Dickenson suggested that expanding funding for the loan program for weatherization may not be wise if a person defaults on the loan. Rep. Dickenson

moved to eliminate item 2 under RCII-11. The motion carried unanimously by voice vote.

- 07:25:23 Chairman Wanzenried suggested the EQC address item 4, AFW-11, and stated the action could be a recommendation in the appropriation for the Montana University System (MUS). Sen. Kaufmann asked for clarification on item 4. Chairman Wanzenried clarified the MUS would use its resources to track food that is grown and consumed in Montana.
- 07:26:38 Sen. Shockley asked whether it would make sense to ask the MUS to do something and not provide funding. Sen. Kaufmann recommended sending a letter to the Board of Regents and exploring the issue.
- 07:27:33 Chairman Wanzenried addressed Sen. Hawks and TLU-10 (1) and asked whether Sen. Hawks thought a letter or resolution would be appropriate. Sen. Hawks explained the intent is to get the message out and a resolution would be appropriate. Sen. Hawks was not certain a letter would inform a lot of legislators unless the letter were sent to all legislators.
- 07:28:48 Sen. Story suggested incorporating item 2 with item 1 and that it could be an amendment to the reporting requirements to the Revenue and Transportation Interim Committee. Sen. Story stated it would be necessary to review the reporting requirements contained in statute.
- 07:30:11 Sen. Hawks agreed the items could be combined, but wanted to recognize the special emphasis on the Complete Streets Program. Sen. Hawks agreed that reporting to the interim committee would be appropriate.
- 07:31:47 Rep. Lambert believed the issue was already being worked on, so the reporting requirements would be the only necessary legislation. Sen. Story agreed the Revenue and Transportation Interim Committee is working on the issue, but that a report needed to be provided to the EQC. Chairman Wanzenried wondered how effective reporting would be. Sen. Story suggested a need to provide encouragement through legislation.
- 07:34:02 Sen. Kaufmann suggested a report is presented and, if the EQC is not satisfied, it will spawn legislation. Sen. Kaufmann believed a generic report would be valuable.
- 07:35:04 Chairman Wanzenried requested more information on the Complete Streets Program, and Sen. Hawks stated explained the Complete Streets Program is a conceptual process out of the planning community and did not have to be referred to specifically.
- 07:36:02 Sen. Story recalled the Complete Streets Program was intended to design streets for multi-use transportation. Sen. Hawks agreed but clarified the Complete Streets Program also encompasses trees, noise, and traffic flow considerations.

- 07:37:59 Rep. French addressed AFW-7 and thought it would be important to see drafted legislation on forestry. Ms. Nowakowski asked whether Rep. French thought it would be appropriate to look into the promotion of research and development of biomass. Rep. French depicted the issue as multifaceted and liked the statement contained in EQC Exhibit 1, presented on May 12, 2008. Rep. French stated the research would have to come from the MUS, and that the MUS research should be funded. Ms. Nowakowski believed some biomass research and tax incentives were already being provided. Mr. Everts suggested referencing a research project that would look at specific factors and the technology of biomass. Rep. French stated if a plant were built in northeastern Montana, transportation would hold back anyone from investing. Rep. French saw a need to look at what is holding back any area from developing biomass. Mr. Everts suggested the MUS could be funded to conduct a feasibility study on the production of biomass.
- 07:43:55 Rep. Lambert wondered whether new funding would be needed or existing funding would be utilized. Rep. French stated a new source of funding would be needed and that she hoped the funding could be included in the Governor's budget.
- 07:44:48 Sen. Story addressed Sen. Hawks and noted the MUS has been trying to find a way to relate to the Legislature and is attempting to promote the growth of the economy in Montana. Sen. Story suggested discussing the issue with the MUS to determine whether the MUS would be interested in the project and what funding would be needed. Sen. Hawks clarified he had talked to Sen. Peterson about outreach from the School of Agriculture, and that the School of Agriculture recognizes it is weak in the area. Sen. Hawks believed if it were given guidance, the School of Agriculture could look for ways to connect with different regions of the state.
- Rep. Vincent submitted a resolution from MACo ([EXHIBIT 12](#)) and stated that he would like to see the EQC support MACo's resolution and forward it to the congressional delegation. Rep. Vincent stated the Fire Suppression Interim Committee (FSIC) is also discussing the issue.
- 07:51:12 Rep. Dickenson commented that she would like the FSIC to look at the issue and make its comments and recommendations to the EQC.
- 07:52:04 Sen. Hawks thought it might be beneficial to seek direction from Dr. Jacobson, School of Agriculture. Chairman Wanzenried noted that the EQC needed to provide specific direction to staff.
- 07:52:54 Sen. Story suggested the EQC should be addressing the Board of Regents. Sen. Story suggested creating an interim study regarding all of the issues surrounding biomass development.
- 07:55:24 Rep. French suggested agricultural waste could be used as biomass.
- 07:56:18 Rep. Witte added the forests in the Kalispell area are ready to burn.

07:57:25 Rep. Vincent stated biomass development could minimize pollutants, and there are a number of places with substantial fuel. Rep. Vincent moved the EQC draft a resolution in support of the MACo resolution as passed on March 3, 2008.

08:00:31 Rep. Dickenson stated she would like to see the resolution in its entirety.

08:01:02 Rep. Lambert supported the motion and saw a need to keep a large enough percentage to halt some of the lawsuits that are designed to stop mitigation of biomass. Chairman Wanzenried asked whether forestry management practices and the ability of people to preempt proper forestry management is an appropriate part of the climate change discussion. Rep. Lambert thought biomass was an appropriate part of the climate change discussion.

08:02:50 Rep. French suggested that a resolution be drafted, and the EQC members receive the full MACo Resolution and have the DNRC make a presentation in July. Rep. Vincent clarified MACo's public lands committee would meet in September. Rep. Vincent emphasized the resolution addresses the Governor's ability to declare an emergency, and that equal access to justice allows anyone to object to a federal policy but is being abused.

08:05:37 Sen. Story thought Exhibit 12 represented the full resolution.

08:06:00 Sen. Hawks suggested the Governor probably would not want to take on the authority to make these decisions and get in the middle of the fight.

08:06:34 Sen. Kaufmann thought the motion was getting too far afield and stated she could not support the motion. Rep. Vincent's motion carried 10-6 by roll call vote.

08:10:46 Sen. Story suggested the EQC should send a letter to the Commissioner of Higher Education asking the Board of Regents to look at the feasibility of members of the combined University System to conduct research and make recommendations.

08:11:40 Rep. French asked to see a draft of the letter before it goes out.

08:11:53 Sen. Story requested staff to put together a request for an interim study asking the EQC look at biomass issues. Staff will prepare the request and present it at the next EQC meeting.

08:15:47 Sen. Kaufmann addressed CC--7, Section 1, setting energy-efficient standards for state buildings.

08:16:34 Rep. Vincent stated he had spoken with a contractor who is also an electrician, who stated he believed the lighting utilized at the state is overkill.

08:17:47 Sen. Hawks just returned from a conference on green buildings and the Leadership in Energy and Environmental Design (LEED) standards, and stated there are evolving standards developed for preservation of older buildings. Sen. Hawks commented the standards are there, and that they are very complex. Sen.

Hawks suggested that in the future, we would see contractors and contracting firms specializing in designing and building green.

- 08:19:31 Rep. Lambert recalled the House Natural Resources Committee discussed the LEED standards and smart buildings.
- 08:20:10 Mr. Cebull added the state Building Energy Conservation Act is already in statute and that the Governor already has the authority.
- 08:20:42 Ms. Moore explained the state Building Energy Conservation Act addresses existing buildings and provides the opportunity for the state to sell bonds to retrofit buildings, and that the bonds are repaid from energy savings. Ms. Moore believed the program is very effective and that new state buildings exceed the building codes. Sen. Hawks spoke about embodied energy, a new LEED concept that will be introduced in the near future.
- 08:22:54 Sen. Kaufmann stated she would like to see draft legislation that expands energy efficiency for new state buildings and which would exceed the current building code.
- 08:23:25 Rep. Vincent asked that the EQC consider the cost of energy conservation versus the rate of return. Rep. Vincent thought short-term returns would be ideal.
- 08:24:06 Rep. Witte thanked Ms. Moore and urged caution in mandating how state buildings are built.
- 08:25:05 Sen. Story reminded the EQC that the bill draft would change once it gets into the process. Sen. Story noted energy audits are being conducted free of charge.
- 08:26:53 Sen. Kaufmann clarified she was referring to construction of state buildings.
- 08:27:18 Sen. Hawks suggested contacting Dr. Ralph Johnson, School of Architecture, Montana State University, for specific information on energy efficiency.
- 08:28:16 Sen. Story asked the EQC to be cognizant that the architecture report on school facilities is supposed to come in, so the state will need to deal with energy conservation in all the school buildings.
- 08:31:02 Rep. French requested a response be requested from the Commissioner of Higher Education regarding studying the feasibility of biomass production. Ms. Nowakowski stated she will draft to separate letter to Commissioner of Higher Education regarding the feasibility of tracking locally grown food.
- 08:32:21 Chairman Wanzneried thanked the EQC and staff.

OTHER BUSINESS

- 08:32:53 Sen. Story, Rep. Lambert, and Chairman Wanzenried will represent the EQC on the EQC/WPIC Joint Subcommittee, and that the Joint Subcommittee would meet as soon as the WPIC members are appointed.
- 08:33:56 Mr. Everts addressed Sen. Shockley's comments regarding term limits and that Rep. McNutt had suggested the possibility of eliminating the statutory term limits for the EQC if the WPIC becomes a subcommittee of the EQC.
- 08:34:19 Sen. Hawks pointed out it is more difficult to find equal numbers of members from the Senate and the House.

INSTRUCTIONS TO STAFF

There were no further instructions to staff.

ADJOURN

- 08:35:32 The meeting adjourned.