



ENVIRONMENTAL QUALITY COUNCIL

PO BOX 201704
HELENA, MONTANA 59620-1704
(406) 444-3742

GOVERNOR BRIAN SCHWEITZER
DESIGNATED REPRESENTATIVE
MIKE VOLESKY

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

SENATE MEMBERS
BRADLEY MAXON HAMLETT--Vice Chair
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

MINUTES

Approved March 4, 2010

DATE: January 7, 2010

Room 172
State Capitol Building

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

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

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

COMMITTEE MEMBERS PRESENT

REP. CHAS VINCENT, Chair
SEN. BRADLEY MAXON HAMLETT, Vice Chair
SEN. JIM KEANE
SEN. RICK RIPLEY
SEN. JIM SHOCKLEY
SEN. MITCH TROPILA
SEN. BRUCE TUTVEDT
REP. SUE DICKENSON
REP. JULIE FRENCH (via telephone)
REP. MIKE MILBURN
REP. CARY SMITH
REP. FRANKE WILMER
MR. BRIAN CEBULL
MS. DIANE CONRADI
MS. MARY FITZPATRICK
MR. MIKE VOLESKY

COMMITTEE MEMBERS EXCUSED

MR. JEFF PATTISON

STAFF PRESENT

JOE KOLMAN, Research Analyst
SONJA NOWAKOWSKI, Research Analyst
HOPE STOCKWELL, Research Analyst
DEBRA POLHEMUS, Secretary
TODD EVERTS, Legislative Environmental Analyst
BARB SMITH, Legislative Fiscal Division

AGENDA & VISITORS' LIST

Agenda ([Attachment 1](#))
Visitor's List ([Attachment 2](#))

COMMITTEE ACTION

- The EQC adopted the September 10-11, 2009, minutes as corrected
- The EQC voted to request a legal analysis be presented at the March meeting on the impact of changing the phrase "fair market value" to "fair market rental value."

CALL TO ORDER AND ROLL CALL

00:00:10 Representative Vincent, Chairman of the Environmental Quality Council (EQC), called the meeting to order at 8:30 a.m. Debra Polhemus, Secretary, called roll ([Attachment 3](#)). Chairman Vincent asked for a motion that the minutes of the September 10-11, 2009, meeting be adopted.

AGENDA

ADMINISTRATIVE MATTERS--Mr. Everts

Adoption of September 10-11, 2009, EQC Meeting Minutes

00:01:44 Senator Hamlett requested that the minutes dated September 11, 2009, be corrected on page 5, paragraph 1, line 5 to read "National Forest Service" rather than "DNRC" (Department of Natural Resources and Conservation). There was no discussion, and Sen. Hamlett's motion to correct the minutes as stated passed unanimously by voice vote.

EQC Budget Review

00:02:42 Todd Everts, Legislative Environmental Analyst, reported that the EQC had a budget of \$75,298.00 with expenses of \$9,823.75 and a remaining balance of \$65,474.25.

HJR 1-- STUDY OF BIOMASS

Presentations -- Introduction, Sonja Nowakowski

- 00:03:10 Ms. Nowakowski, Research Analyst, Legislative Services Division (LSD), submitted "Montana Biomass" ([EXHIBIT 1](#)), which reviewed the following issues relative to biomass:
- availability
 - technologies
 - current incentives, and
 - potential biomass funding incentives
- 00:08:46 Todd A. Morgan, Director of the Forest Industry Program, Bureau of Business and Economic Research (BBER), University of Montana, shared results from analysis of his biomass availability study. Mr. Morgan's PowerPoint presentation showed the declining level of Montana's annual timber harvest; Montana's timber resource level; comparison of public versus private resources; timber-processing capacity and lumber prices; forest-based woody biomass usage; and, woody biomass opportunities ([EXHIBIT 2](#)).
- 00:30:36 Brian Spangler, Program Manager, Renewable Energy and Clean Air Program, Department of Environmental Quality (DEQ), and Howard E. Haines, Jr., Bioenergy Program Manager, Air, Energy and Pollution Prevention Bureau, DEQ, gave a PowerPoint presentation "Montana Agricultural Biomass Residual Overview" covering agricultural residuals (grasses, straw, low-quality hay, sugar beet pulp, silage short-rotation crops, oilseed straw, black alder, hybrid poplar, animal manure), sources, benefits, applications, and future resources ([EXHIBIT 3](#)).

Public comment

- 00:54:17 Steven Eiger, Access Energy & Technologies, Bozeman, discussed his work providing waste-to-energy processes using existing technology and proposal to locate a biomass converter in Montana ([EXHIBIT 4](#), [EXHIBIT 5](#)).
- 00:58:39 Steve Marks, Marks Lumber, Clancy, stated he has a 945-acre Jumpstart program south of town, producing 18,000 tons of biomass and has been involved for ten years with a Bureau of Land Management (BLM) project north of Helena (Scratch Gravel Hills) producing about 6,000 tons of biomass. Mr. Marks circulated a sample of ground up biomass and displayed a wooden guardrail post. Mr. Marks strongly encouraged the State of Montana to use wooden guardrails, a form of biomass, throughout the state.
- 01:04:22 Pat McKelvey, Project Manager, FireSafe Montana, Helena, circulated an invitation to the Montana Communities and Wildlife Conference scheduled for February 25-27, 2010 ([EXHIBIT 6](#)). Mr. McKelvey discussed the diseased and dying trees around Helena and encouraged the use of mitigation or alternative methods to use the timber.

Questions and discussion

- 01:07:42 Senator Ripley asked Mr. Spangler and Mr. Haines for a copy of their presentation and specifically questioned the information provided on straw. Mr. Haines said he obtained the numbers from the Montana Department of Agriculture.
- 01:10:48 Senator Shockley asked whether it takes more energy to produce ethanol than what is received for it. Mr. Haines asked that the committee review the chart in his handout titled "Biofuels Net Energy" (Exhibit 3).
- 01:13:19 Representative Wilmer expressed an interest in the public policy issue and asked for further elaboration on the term "limited by net metering," as was referenced in the discussion about the bio gas project in Corvallis. Mr. Haines explained that "net metering" is a 50 KW limit of power through most rural electric co-ops.
- 01:15:34 Representative Wilmer questioned whether the byproducts of corn stover actually compete with food crops. Mr. Haines responded that technology is somewhat of a handicap in that the products need to be handled differently.
- 01:17:45 Mr. Cebull expressed the concern about the energy balance and requested information on energy cost to raise crops. Mr. Haines admitted that it was less efficient to use gas and diesel due to costs. Mr. Cebull asked for an elaboration on the negative energy balance of petroleum gasoline and diesel. Mr. Haines said that the data includes all costs of processing, mining of petroleum products, and transportation costs.
- 01:20:05 Senator Tutvedt questioned that if corn stover was \$15 to \$30 per ton, and this product was removed resulting in the removal of micronutrients from the soil, how the nutrients would be returned. Mr. Haines reported the numbers presented reflected excess straw which was previously burned in the field, and that for lands that need straw, the product is not being removed.
- 01:22:27 Senator Tutvedt remarked that ethanol producers first wanted a less valuable, lower quality corn, but are now requesting a higher value of grain, and he was concerned that this same situation would occur with hay thus eliminating the use for "rotten" hay. Mr. Haines responded that there were three different processes, and that this procedure was looking at using residuals only.
- 01:24:40 Representative Milburn inquired as to the definition of biomass derived from d2. Mr. Haines reported that "d2" is diesel, and can process biomass in different forms and get a liquid close to biodiesel.
- 01:25:37 Representative Milburn stated that if a 60 percent return is realized with this process, the petroleum industry should be failing with their return. Mr. Haines reported that the numbers are energy balance and not in dollars

- 01:26:19 Ms. Conradi inquired about the significance of transportation costs. Mr. Spangler had not taken transportation costs into consideration; however, transportation costs could be significant.
- 01:28:42 Ms. Conradi asked if that scenario presently exists in Montana. Mr. Spangler replied that there are ten fuel projects located throughout the state, as well as several sawmills that are geographically disbursed.
- 01:32:15 Mr. Volesky inquired whether Mr. Marks worked with Director Lynch, Montana Department of Transportation (MDT), concerning the possible use of lumber for guardrails. Mr. Marks reported that he has written correspondence with the MDT, and has had one meeting with Representative Mendenhall.
- 01:36:31 Representative Dickenson stated that previous legislatures have passed measures to encourage the use of wind power. Due to the intensive capital requirements of these projects, only larger companies are developing windfarms to the exclusion of smaller communities, as originally envisioned. Paralleling the development of biomass energy where small facilities scattered around the state are envisioned, Rep. Dickenson expressed concern that these same capital pressures would result in larger biomass facilities.
- 01:38:46 Mr. Spangler stated that a meeting is scheduled for January 19, 2010, with DEQ regulatory agents for NorthWestern Energy to present the results of their ongoing feasibility study on biomass.
- 01:39:38 Angela Farr, Forestry Division, DNRC, stated that the studies are due to be completed at end of March. The studies will try to find a good balance point between fuel and transportation costs and the location and size of facilities.
- 01:43:12 Ms. Conradi questioned whether managed fuel reduction areas have proven to be financially beneficial in mitigating firefighting costs. Ms. Farr replied that studies have shown a positive correlation and deferred further comments. Pat McKelvey stated that suppression costs are not allowed to be used in the grant application process, but if the value of the property is considered, he has seen a benefit cost of \$1 to \$20 based on fire damage.
- 01:46:42 Senator Tutvedt referenced a Stoltz Lumber report and proposal with Flathead Electric at \$.12 with an added \$.03 for costs. Senator Tutvedt questioned if the consumer would accept this if this were the primary source of energy. Ms. Farr believed that the pending study would better identify the costs.
- 01:49:39 Senator Hamlett wanted clarification whether the price stated for 1,000 board feet was scaled log price or milled lumber. Mr. Morgan replied that it was lumber tally and not log price. Senator Hamlett inquired whether the federal government was going to participate in the biomass projects in Montana considering they controlled the majority of lumber in the state. Mr. Morgan stated that the federal government was actively participating and has U.S. Forest Service (USFS) and BLM representatives on the committees. Senator Hamlett questioned whether the USFS was allowing any sales of biomass. Mr. Morgan stated that as the

USFS conducts thinning operations there is a biomass component allowed along with the traditional timber product. Senator Hamlett inquired about the benefit of biomass locations closest to power grids and resources. Mr. Morgan stated that existing sawmills and wood product facilities are already tied to the power grid. Senator Hamlett asked for research on the capacity of power grids presently located near sawmills. Mr. Morgan did not have that information but believed the information could be obtained.

- 01:54:10 Chairman Vincent stated that the committee would be provided with information to answer Senator Hamlett's inquiry before the end of March. Chairman Vincent stated that the numbers appeared to include standing dead trees and inquired whether the numbers included any blow-down trees. Mr. Morgan stated that no blow-down numbers were included and defined the standards for a blow-down tree as one with a 45 degree angle or less. Chairman Vincent also noted that a great volume could be generated from thinning projects focusing on trees 5" or less in size. Mr. Morgan concurred and noted that most of the smaller trees were not included in the numbers. Chairman Vincent inquired whether other filters were used, such as Endangered Species Act (ESA) issues. Mr. Morgan reported that this was doable, but was not taken into consideration in this report.
- 01:58:53 Chairman Vincent wondered whether regional matters were taken into consideration (e.g. the lower density of agricultural products in the central and eastern part of the state would have much higher transportation costs than the higher density timber transportation costs of the western part of the state). Mr. Haines reported that this factor was not take into account in this study and recommended the Agriculture Research Center as a resource for information.
- 02:04:04 Senator Hamlett stated that he assumed the bio char process produces electricity, liquid fuel, and fertilizer. Mr. Haines stated that the bio char process can combust at high temperatures and produce electricity and, additionally, does not specifically produce a fertilizer, but a product that is considered a soil improver acting like an activated carbon. Senator Hamlett inquired about the commercial value per ton of bio char. Mr. Haines believed it is priced similar to lime but noted that it is a new product with limited usage in the United States. Senator Hamlett asked whether this process is environmentally friendly. Mr. Haines stated that the proponents claim that the process is environmentally friendly, but noted that it will not be completely evaluated until the permitting process is launched.
- 02:07:25 Representative French (via telephone) inquired about the research conducted on gasification of biomass (not ethanol) and related transportation issues including the distance a farmer already hauls products. Mr. Haines commented that gasification is already a commercial process and three places in Montana (two schools and one university) are using wood. He stated farm transportation issues have not been directly studied recently, but past reports indicate that when hauling a more-valuable product like peas, the transportation cost is added to the product cost to make it more valuable. Rep. French asked about a product that results from gasification that is similar to natural gas. Mr. Haines reported that a

location in North Dakota takes coal and gasifies biomass, however, this is heavily subsidized by the federal government.

(BREAK)

Directions to Staff and Committee

- 02:29:54 Chairman Vincent requested that the EQC reread Ms. Nowakowski's report and have recommendations to staff by end of day.
- 02:30:28 Ms. Conradi inquired whether the EQC would be hearing from electricity suppliers.
- 02:30:43 Chairman Vincent asked for recommendations of what information the committee would like to have and will request it for the March meeting.
- 02:31:24 Mr. Cebull requested to see the presentation on cost that Mr. Haines referred to during his presentation.
- 02:31:49 Senator Shockley noticed that different figures and statistics concerning corn-based ethanol were presented and inquired if the staff could help to provide a more accurate accounting.
- 02:32:27 Ms. Fitzpatrick asked if that report could include information on carbon pricing.

DNRC -- POTOMAC LAND ACQUISITION

- 02:32:46 Mary Sexton, Director, Department of Natural Resources and Conservation (DNRC), presented an overview on the Potomac land acquisition process ([EXHIBIT 7](#)).

Questions and discussion

- 02:36:25 Senator Hamlett inquired if the DNRC would provide the EQC with mineral right and water right information. Director Sexton agreed to make the information available to the EQC.
- 02:36:56 Chairman Vincent asked about the appraisal of the 35,000 acres and questioned the likelihood that the DNRC would not use the entire \$21 million of bonds for the acquisition of the 35,000 acres. Director Sexton agreed that there is a possibility of not using the entire amount.
- 02:37:47 Chairman Vincent wondered whether the same cost/benefit analysis was used in the Fish Creek area purchase. Director Sexton noted that the potential productivity was much greater in the Potomac compared to the Fish Creek acquisition.

Public comment

There was no public comment.

HJR15-- TOURISM and RECREATIONAL ACCESS STUDY

- 02:39:55 Hope Stockwell, Research Analyst, Legislative Services Division (LSD), presented a report entitled "Monetary Incentives for Tourism and Recreational Access House Joint Resolution No. 15 Draft Study Summary"(EXHIBIT 8). The presentation reviewed the feasibility and possible funding sources for a program that would provide monetary incentives to private land owners who provide public access to their properties for recreational and tourism-related activities.
- 02:51:50 Chas Van Genderen, Parks Division Administrator, Fish, Wildlife & Parks Department (FWP), supported the study resolution (EXHIBIT 9).

Public comment

- 02:54:07 George Edwards, Livestock Loss Coordinator, Montana Livestock Loss Reduction & Mitigation Board, Montana Department of Livestock, presented statistics on the livestock loss due to wolves within the state of Montana. Mr. Edwards stated his program may pursue similar expanded funding options as those considered by HJ15 (EXHIBIT 10 and EXHIBIT 11).

Questions and discussion

- 02:58:36 Representative Milburn expressed gratitude to Ms. Stockwell for the amount of work and research completed. Representative Milburn reported that he recently met with the individuals who developed this idea and a representative from FWP. Representative Milburn suggested that while the comments were encouraging, the group felt a few areas should be studied further:

- is grant money available;
- is there one or more landowners of large parcels that might be interested in allowing public access to their private lands;
- funding issues considering present budget constraints;
- feasibility of issuing a conservation license; and,
- access of private land to view wolves

Representative Milburn hoped these items could be discussed and a final decision made at the March meeting.

- 03:02:44 Ms. Conradi referenced a Whitefish-area project where the DNRC and Land Board explored public/private partnerships for conservation ideas.

- 03:05:24 Representative Dickenson expressed concerns voiced by the Private Lands/Public Wildlife Council (PLPW) of not wanting to take money from the block management land program. Representative Dickenson believed it made sense to compliment the block management program with another program for

other recreation and possibly introduce a new license with a fee to help fund the project.

- 03:07:46 Senator Tutvedt inquired whether there were any studies of what a landowner would get for giving property to this project and what value the landowner would gain in light of the control that they would lose.
- 03:08:41 Representative Milburn stated that the selling point behind this, unlike leasing, would be similar to that of the Block Management Program (BMP), and that the landowner could stipulate to maintain their level of control.
- 03:10:16 Mr. Cebull noted that the BMP is typically seasonal, whereas this proposed program would mostly be year-round. Mr. Cebull also expressed concern about enforcement issues.
- 03:11:15 Representative Milburn agreed that landowners have liked not having to enforce the BMP.
- 03:12:13 Senator Ripley expressed concern about removing public access after the state purchases more land and closes trails.
- 03:13:21 Representative Milburn also noted that the new program would give another option to the FWP to increase recreational access without needing to purchase property.
- 03:14:46 Senator Ripley stressed the success of the BMP but was cautious of a developing trend, where more money is going to administer the program and less money goes to the landowner.
- 03:15:34 Barbara Smith, Fiscal Analyst, Legislative Fiscal Division (LFD), reminded the committee that the current BMP is funded with out-of-state license purchases.
- 03:16:38 Ms. Conradi noted that a trail makes access through the property not to the property.
- 03:19:05 Representative Milburn thanked the committee for the suggestions and questions raised and requested that members bring further ideas to the next meeting and plan to make a final decision on this program at that time.

Directions to Staff

- 03:20:36 Ms. Stockwell noted the expressed areas of further inquiry:
- revenue neutral;
 - grant money for pilot project;
 - conservation license expansion;
 - private landowner issues;
 - funding sources; and,
 - cost benefit to landowner

(LUNCH BREAK)

NOXIOUS WEEDS PANEL DISCUSSION

- 04:31:28 Hope Stockwell, LSD, introduced the presenters.
- 04:32:04 Scott Bockness, Montana Weed Control Association, Yellowstone County Weed District, presented a program entitled "Noxious Weed Law Issues for Montana" (**EXHIBIT 12**).
- 04:37:48 Jed C. Fitch, Beaverhead County Attorney, discussed that a county's decision to deal with weed control issues is influenced greatly by the priorities and funding issues each county faces.
- 04:43:47 Dave Burch, Weed Program Manager, Department of Agriculture, circulated the most current County Weed Act and Administrative Rules (**EXHIBIT 13**) and an explanation of the proposal to restructure the Noxious Weed List (**EXHIBIT 14**).
- 04:51:18 Harold L. Blattie, Executive Director, Montana Association of Counties (MACo), appeared on behalf of Dave Schultz, Madison County Commissioner. Mr. Blattie discussed the difficulty of implementation and management under the current Weed Management laws. Mr. Blattie circulated a Request for Legislative Review of Montana's County Weed Act (**EXHIBIT 15**) and draft of a proposed bill (**EXHIBIT 16**).

Public comment

There was no public comment.

Questions and discussion

- 04:55:59 Mr. Volesky suggested that a representative group come together to draft a bill and get past the study bill portion of the proposal.
- 05:00:24 Senator Shockley asked if a problem existed in collecting the money for the board. Mr. Fitch replied no and informed the EQC that statute provides that the fee be placed on the tax bills and collected by the county treasurer.
- 05:01:12 Representative Wilmer observed that the group has ideas to solve the identified problems and wondered if developing a specific list of suggested solutions would allow for a quicker solution without the need to commit the time to conduct a full study of the issue. Dave Burch agreed with this point and wondered if either EQC or LSD would help draft a bill.
- 05:03:59 Mr. Blattie commented on the demonstrated need to involve the legislative process and obtain the collective wisdom of many, which will result in a better finished product.

- 05:06:33 Senator Tropila asked Mr. Fitch to identify one item that could be changed in the noxious weed law. Mr. Fitch stated the county attorney should be involved sooner in the process and the onus should be on the weed board to get an injunction to spray and not on the owner to stop it.
- 05:12:51 Senator Tropila inquired of Mr. Burch if he agreed with the comments expressed by Mr. Fitch. Mr. Burch agreed that those would be improvements to the weed policy. He further commented that the structure of the weed programs vary substantially between counties.
- 05:16:40 Representative Dickenson asked whether there was a need for specific language in the law to help alleviate the concerns of organic farmers. Mr. Burch responded that laws dealing with organic farming do not match up well with other laws, including subdivision law.
- 05:18:32 Senator Hamlett observed that the counties have a varied approach to treating weeds. Mr. Blattie replied that there are variances between the counties, often fueled by issues of funding, staffing, and the level of passion of the people involved.
- 05:20:04 Representative French (via telephone) also noted the differences in counties and what is sprayed and inquired if this variance also occurred among the railroad companies. Mr. Blattie responded that he was not sure on a statewide basis. Barbara Ranf, representing Burlington Northern/Santa Fe Railroad, stated that the railroad works closely with local entities and communities to address weed issues.
- 05:23:14 Representative French noted that the railroad had given a small amount of money to weed districts to spray weeds along abandoned railroad lines and that confusion existed about weed treatment along abandoned rail lines on state lands. Ms. Ranf commented that payment, liability and treatment depended on who specifically owned the railroad line but that the company would be very interested in working with Rep. French to find a solution to any problem arising from this issue.
- 05:24:23 Representative French inquired if another group would bring forth legislation if the EQC did not take action on the issue. Mr. Blattie reported that he was not aware of a resolution being drafted, and that he would be available and interested in working with any party to improve the legislation.
- 05:25:46 Chairman Vincent asked if Mr. Fitch had run this scenario through the Montana County Attorney's Association (MCAA). Mr. Fitch said he had not discussed this specific issue outside of Beaverhead County.
- 05:27:00 Senator Hamlett asked if the railroad had been asked by any county not to spray for weeds along the railroad line. Ms. Ranf was uncertain but stated she would obtain the information and report to the EQC.

05:28:06 Chairman Vincent inquired of the EQC what it would like to do with the issue and wondered if some of the ideas could be vetted between now and the March meeting. Mr. Volesky suggested that the Department of Agriculture convene a group to work through the issue with interested parties and craft a bill. Mr. Blattie agreed and stated that MACo would strongly encourage this approach.

SJR 28--STUDY OF RECYCLING

05:32:48 Sonja Nowakowski, LSD, presented an overview of recycling in Montana and circulated background information and discussion points (**EXHIBIT 17**) regarding:

- Hazardous Waste & Montana Efforts
- Electronic Waste & Montana Efforts

05:35:38 Sandra Boggs, DEQ, gave a PowerPoint presentation on "Recycling Electronics in Montana" (**EXHIBIT 18**) and circulated materials on the state perspective of electronics recycling (**EXHIBIT 19, EXHIBIT 20**).

06:09:22 Brandon Fox (via telephone), Tatooine Electronics, introduced Kolbi Peterson, who gave a PowerPoint presentation (**EXHIBIT 21**) and circulated a report on "What Happens To Our E-Waste?" (**EXHIBIT 22**).

Public comment

There was no public comment.

Questions and discussion

06:20:39 Representative Milburn asked about the level of lead in a computer. Ms. Boggs reported that manufacturers are continuing to reduce the size of hazardous waste in electronics. Ms. Nowakowski reported that manufacturers vary and that while a minimal amount is found in modern electronics, up to two to five pounds of lead is found in older television sets.

06:23:10 Senator Hamlett inquired whether the state has a policy on used hard drives when disposing of computers. Ms. Boggs outlined the policy for data destruction.

(BREAK)

DNRC HOMESITE/CABIN LEASING PROGRAM

06:41:01 Mary Sexton, Director, DNRC, presented an update on the cabin site leasing proposal as suggested by the Land Board.

Public comment

There was no public comment.

Questions and discussion

- 06:48:23 Representative Dickenson inquired to the large difference among properties located on Flathead Lake (**EXHIBIT 23** - "Cabin Site Leasing On School Trust Lands: A Look at the Proposed Formula prepared by Barbara Smith, LFD). Director Sexton acknowledged that there were not many Flathead Lake properties specifically, but many more properties at Echo Lake and Rogers Lake. Rep. Dickenson noted that the few properties at Flathead Lake must be extremely valuable. Director Sexton commented that the Flathead Lake properties have been paying comparably less considering the extreme value.
- 06:53:46 Senator Tutvedt questioned the increase of lease fees along Flathead Lake and presented a letter from Brian C. Tanko, Esq., Kalispell, who represents a group of leaseholders (**EXHIBIT 24**).
- 06:56:47 Senator Shockley remarked that from a legal standpoint leaving part of the appraised value out of the state fee could be viewed as not responsible to the fiduciary. Director Sexton felt that if the true appraisal value was considered in some of the most valuable properties, the state could be faced with some abandonments and lose fee income.
- 06:59:03 Senator Ripley inquired whether the base value was the same as fair market value. Director Sexton replied that the value is based on 2009 levels and uses two different methods. Senator Ripley asked if the Alternative 3B method meets the standards, and Director Sexton replied that it did, as best as could be determined.
- 07:01:08 Representative Dickenson asked if the department would be uncomfortable with a leaseholder opting to purchase the leased land. Director Sexton responded that this topic was thoroughly studied in the 1990's, and that with a present return on investment of five percent, from a purely financial perspective, the state benefits by keeping these leased lands in the portfolio.
- 07:02:48 Senator Tutvedt shared knowledge that many leaseholders are very unhappy and report that they will be leaving their leases. Sen. Tutvedt felt the idea to sell this land could be a positive one and that the state would benefit not only from the sales dollars but also from increased property tax generation.
- 07:04:12 Senator Shockley expressed satisfaction with the Director's position on the possible sale of these properties.
- 07:04:36 Senator Tutvedt asked if the term was changed to "fair market rental value" from "fair market value" whether that would protect the state in possible future court cases. Director Sexton believed it would be a difficult change to make.
- 07:06:52 Senator Shockley agreed that if the state is not going to sell the property, the value of property is the rental value not the fair market value.

07:07:50 Senator Hamlett asked whether the year-to-year appraisals could drop, as well as increase. Director Sexton responded that the rules state that the lease fee index cannot go below 3.25 percent.

07:08:57 Mr. Everts reminded the committee this is not a rulemaking process but a public comment period.

07:09:54 Senator Tutvedt asked that the "fair market rental value" language replace the "fair market value" because the leases should not be based on appraised sales value.

07:11:05 Representative Smith agreed with inserting "fair market rental value."

07:11:27 Representative French inquired whether all of the leased property is potentially sellable property. Ms. Smith replied that the lands could be sold, although trust lands could be sold only by going through a clearly stated process.

07:15:23 Representative French asked what the rental would be on Flathead Lake. Mr. Volesky reported most Flathead Lake properties were renting for \$4,500 per month.

07:18:57 Senator Tutvedt commented that leasing bare land should not be compared to leasing property with a structure on it.

07:21:27 Representative French asked whether location and recreation opportunities are considered when placing value on a lease. Representative Tutvedt agreed that different ratios and lease values would be based on those factors.

07:24:04 Representative Smith stressed the importance for protecting the rights of the landowner and lease holder and asked about the improvements done to land by a lessee. Senator Shockley stated that if a lessee builds a fixture, the fixture stays on the land and stays with the lessor.

07:25:36 Senator Tutvedt commented that agricultural land improvements can be sold to the new lessee.

07:27:36 Chairman Vincent inquired whether this issue was discussed previously within the department. Jeanne Holmgren, DNRC, said this was discussed in the rulemaking committee, and it was set at five percent, and that the process takes into consideration that this is rental property.

07:30:51 Senator Hamlett inquired about an agricultural lease and if a well is drilled and a fence is installed and the lease changes hands, whether the next leaseholder would pay for the improvements. Ms. Holmgren informed the committee that the state has three years to market the property before the value of the improvements are lost.

07:32:32 Chairman Vincent inquired whether a review of the constitutional situation of this issue had occurred, especially since there are restrictions on the sale of property

next to navigable waters. Chairman Vincent also inquired about reviewing the constitutionality of changing the language by inserting the word "rental" as recommended by Senator Tutvedt.

Motion and vote

- 07:35:50 Senator Tutvedt moved that at the March meeting a legal analysis be presented on the impact of changing the phrase "fair market value" to "fair market rental value." Ms. Smith reported that some of the financial information already exists. Representative Wilmer stated that the fiduciary issue is part of the constitutionality discussion.
- 07:39:21 Ms. Conradi commented that the fair market value already contains the fair market rental value and the phrase appears to be redundant.
- 07:40:45 Motion carried unanimously by voice vote.

ADDITIONAL DISCUSSION OF HJR 1 -- STUDY OF BIOMASS

- 07:41:30 Senator Shockley asked the staff for more definite information on ethanol yield. Ms. Nowakowski will also obtain the analysis of the capacity of grid transmission potential near sawmills and also arrange for Mr. Haines to do a cost analysis at the March meeting, including inviting utility companies and co-ops to discuss biomass and the cost analysis on carbon prices.
- 07:43:58 Representative French asked to receive a report on the potential cost of trucking biomass. Chairman Vincent responded that Mr. Haines will be presenting this information at the next meeting.
- 07:46:54 Representative Dickenson questioned the wisdom in meeting before the feasibility studies were complete and wondered if the EQC could obtain a preliminary report of the information. Chairman Vincent agreed to make an inquiry, although he was uncertain when the actual studies were scheduled to be completed.
- 07:49:01 Ms. Nowakowski stated that the reports would be completed closer to June 2010.
- 07:49:36 Senator Tutvedt reported on a conversation he had with an energy industry official who said a biomass facility would need to be a larger plant close to producing 100 KW of power. Senator Tutvedt desired to review information relative to developing a much larger biomass plant.
- 07:51:01 Senator Hamlett asked the staff to report on how much water is consumed to produce ethanol versus producing biomass.
- 07:52:04 Chairman Vincent commented that with logging and wood byproducts, the fuel costs of diesel allowed for a 40-70 mile radius.

- 07:54:13 Ms. Conradi requested information on co-firing, burning wood with coal, and whether there are any plants in Montana presently doing that.
- 07:56:11 Ms. Nowakowski mentioned that emissions would be discussed at the March meeting.
- 08:00:42 Chairman Vincent recessed the meeting at 4:35 P.M.

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