



ENVIRONMENTAL QUALITY COUNCIL

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SONJA NOWAKOWSKI, Research Analyst
HOPE STOCKWELL, Research Analyst
CYNTHIA PETERSON, Secretary
TODD EVERTS, Legislative Environmental Analyst

MINUTES

Approved May 24, 2011

September 14, 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.

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COMMITTEE MEMBERS PRESENT

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

MEMBERS ABSENT

SEN. JIM KEANE
SEN. BRUCE TUTVEDT
MR. MIKE VOLESKY

STAFF PRESENT

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

Visitors

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

COMMITTEE ACTION

- The EQC voted to approve Fish, Wildlife & Park's proposed legislation.
- The EQC approved LC 7011.
- The EQC amended LC 7000 to remove the permitting requirements on all lands except in incorporated cities.
- The EQC approved LC 7000 as amended.
- The EQC approved its final report on biomass for publication.
- The EQC voted to request a performance audit of Fish, Wildlife & Park's Crucial Areas Planning System program.
- The EQC voted to send a letter to the U.S. Department of the Interior and the U.S. Department of Justice encouraging aggressive pursuit of other wolf management options.
- The EQC voted to draft a committee resolution urging the congressional delegation to aggressively pursue other wolf management options.

CALL TO ORDER AND ROLL CALL

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

AGENDA

RULE REVIEW

00:01:23 Mr. Everts reviewed recent rule review activities (**EXHIBIT 1**). Mr. Everts also informed the EQC members that Sonja Nowakowski and Hope Stockwell, Legislative Services Division, had received an award from the National Council on State Legislatures.

Public Comment

There was no public comment.

Questions & Discussion--EQC

There were no questions.

STATUTORY DUTIES: FWP LEGISLATIVE PROPOSALS/REQUEST FOR DRAFTING

00:03:54 Mr. Everts explained that the legislative proposal review process is required by statute, and the EQC can request a bill draft but doing so does not necessarily mean the EQC supports the legislation.

FWP Dir. Joe Maurier

00:04:54 Joe Maurier, Director, Fish, Wildlife & Parks (FWP), reviewed FWP's proposed legislation (**EXHIBIT 2**).

Public Comment

There was no public comment.

Questions & Discussion--EQC

00:17:26 Mr. Cebull wondered what the maximum population of bull trout could be in Flathead Lake. Director Maurier could not provide an exact number and did not believe there would be adequate biomass to support a substantial number of bull trout. Mr. Cebull commented he thought Flathead Lake would be a large target for sustaining bull trout. Director Maurier agreed and stated that was part of the controversy and cautioned that over population could have the opposite effect.

00:20:56 Rep. Milburn asked what the proposal would allow FWP to do that it could not do already. Director Maurier explained that FWP would like to establish a bounty to catch lake trout. Rep. Milburn asked for more information regarding the State Park Enhancement Act. Director Maurier explained the State Park Enhancement Act was established in the early 1980s and that the pot of money is now mixed with money received from revenue from land. FWP is asking that their revenue not have strings attached. Director Maurier asked to exempt state parks from the Real Property Trust Act.

- 00:23:41 Sen. Shockley recalled FWP did not like the Primitive Parks Act when the Act was originally passed.
- 00:24:42 Mr. Cebull commented that he continues to hear about FWP purchasing additional land. Mr. Cebull was curious about the large blocks of new land coming under FWP's management. Director Maurier stated he would like to re-tool the park system. Director Maurier explained how he would like to take the most significant areas and develop them correctly rather than having small random state parks that do not get much use.
- 00:28:31 Sen. Ripley asked if Director Maurier would be in favor of transferring those lands to the Department of Natural Resources and Conservation (DNRC). Director Maurier responded that from a practical point of view, transferring the lands to DNRC would probably not work well.
- 00:29:29 Mr. Pattison asked Director Maurier what he had in mind for the size of a larger block. Director Maurier could not provide an answer but cited a need to maintain access and recreational opportunities and take advantage of opportunities to purchase land when those opportunities arise. Mr. Pattison wondered why FWP supposed land would be locked for hunting and fishing. Mr. Pattison also wondered whether the conservation easements that FWP is selling were part of locking up land. Mr. Pattison also asked whether specific blocks of land in Montana were being considered by FWP. Director Maurier responded there are no specific areas identified, but that FWP attempts to move land acquisition around and take advantage of opportunities and reasonable prices. Director Maurier explained efforts to purchase the former Plum Creek land from the Nature Conservancy. Director Maurier emphasized that all land purchased by FWP is for the benefit of the public. Chairman Vincent commented that the Nature Conservancy also used public dollars to acquire the land from Plum Creek.
- 00:35:14 Rep. French commented that she has seen areas that were considered prime hunting closed off to public hunting. Rep. French thought there was a need to ensure that Montanans have the ability to fish and hunt. Director Maurier explained the Habitat Montana program is in law and that is the money FWP is spending. Director Maurier assured Rep. French that FWP is following the law.
- 00:36:48 Chairman Vincent addressed Chas Van Genderen, Parks Division Administrator, FWP, and asked whether the bill would allow FWP to develop more sites or maintain current sites. Mr. Van Genderen explained FWP currently manages a number of parks that do not generate much revenue. Mr. Van Genderen stated FWP has a responsibility to take care of property and ensure public safety and reduce impacts to natural resources. Mr. Van Genderen also saw a need to have on-site campground hosts to address landowner and visitor concerns.
- 00:42:35 Chairman Vincent observed FWP would continue to need more FTEs if it is going to continue to acquire more land.

00:43:00 Sen. Ripley addressed the fishing access site in the Libby area that has 75 camping sites. Mr. Van Genderen provided background information on Thompson Chain of Lakes. Mr. Van Genderen emphasized that managing recreation does have a cost. Sen. Ripley stated he has heard weeds are not any better maintained at the sites and wanted to know how much maintenance is being provided. Mr. Van Genderen could not speak to the level of weed infestation at the site. Mr. Van Genderen also explained that no license monies are used for state parks and the fishing access site program is understaffed. Sen. Ripley commented if the Thompson Chain of Lakes sites are generating \$100,000 a year in revenue and not being maintained, he would not support the development of any more parks.

Council Action, if any, and Directions to Staff

00:49:46 Sen. Shockley moved the EQC approve FWP's proposed legislation.

00:50:38 Sen. Ripley noted that even if the EQC fails to endorse a bill, FWP can still introduce the bill. Sen. Shockley explained it is a more efficient way to utilize staff time and pre-introduction is a convenience to the agency and the staff.

00:52:18 Mr. Cebull asked for clarification that there will be no endorsement by the EQC. Mr. Everts agreed and stated the bills will all state "By the Request of FWP."

00:52:58 Rep. Dickenson commented that she appreciated FWP's proposed legislation to address challenging issues.

00:53:50 Sen. Shockley's motion carried with Sen. Ripley, Rep. Smith, Rep. Milburn, and Mr. Pattison voting no. Ms. Conradi and Sen. Keane voted aye by proxy.

00:55:04 Barbara Smith, Legislative Fiscal Division, provided the requested information about transferring FWP license money to the general fund. Ms. Smith submitted "Federal Aid in Sports Fish and Wildlife Restoration Programs Restrict the State's Use of Hunting and Fishing License Funds" ([EXHIBIT 3](#)), and historical fund balance information ([EXHIBIT 4](#)).

00:58:14 Sen. Ripley wondered how the EQC could find out how many acres have been purchased in the past four or five years. Ms. Smith stated she would need to work with the FWP.

AGENCY OVERSIGHT: WOLF LITIGATION UPDATE

00:59:49 Director Maurier provided an update on the wolf hunting season and the latest court ruling placing wolves back on the endangered species list. Director Maurier explained that FWP will be appealing the decision. Director Maurier identified a need to have the U.S. Fish and Wildlife Services join in the appeal and believed the appeal should not include just Montana and Idaho. Director Maurier noted the appeal process time line could be lengthy. Mr. Maurier outlined the various strategies being considered to maintain FWP's wolf hunting season and manage Montana's wolf population.

01:16:23 Hope Stockwell, Research Analyst, directed the EQC members to FWP correspondence regarding the gray wolf population in Montana ([EXHIBIT 5](#)) and a report regarding the Livestock Loss Reduction & Mitigation Board and Program 2010 Annual Report ([EXHIBIT 6](#)).

Bob Lane, Chief Legal Counsel, FWP

01:17:12 Bob Lane, Chief Legal Counsel, explained what happened during the litigation and what is expected to happen with the appeal.

01:28:05 Steve Doherty, Senior Advisor to the Secretary of the Interior, explained the U.S. Department of the Interior (DOI) has been on the same side as Montana and Idaho in their efforts to manage wolves. However, the DOI did not approve Wyoming's management plan. Mr. Dougherty stated the DOI is committed to state management of wolves in Idaho and Montana.

Public Comment

01:34:32 Ben Lamb, Montana Wildlife Federation, acknowledged and thanked the FWP for their efforts to manage the wolf population in Montana. Mr. Lamb believed the EQC should ensure Montana's wolf management plan is maintained.

01:39:53 James St. Goddard, submitted his biography ([EXHIBIT 7](#)) and provided traditional and scientific information about the wolf. Mr. St. Goddard believed the Blackfeet Tribe was not included in discussions regarding wolves. Mr. St. Goddard wondered whether money was more important than the wolf. Mr. St. Goddard believed people will disintegrate themselves by destroying wolves.

01:48:09 Jerry Black, Missoula, read a letter from Stevie Woods, Bozeman, regarding the management of wolves ([EXHIBIT 8](#)).

01:55:12 Marc Cooke, Stevensville "Wolf Warriors," provided information regarding losses incurred by the cattle industry and the management of wolves by FWP. Mr. Cooke was disappointed with the way FWP manages wolves in Montana.

01:57:32 Dave Bachand, Browning, believed wolves are killing the sick and young in an attempt to survive.

Questions and Discussion--EQC

01:58:46 Sen. Ripley asked Director Maurier if there was any consideration given to turning management of wolves back to the federal government. Director Maurier stated no and thought it was in Montana's best interest to manage the wolf. He added, however, if the perfect storm arrives, turning management over to the federal government would be considered. Sen. Ripley agreed and asked if Idaho was considering the same. Director Maurier stated it was not a consideration for Idaho, at least not in the short term.

- 02:01:06 Sen. Shockley suggested there could have been a statutory fix several years ago and wondered if it could be statutorily fixed now. Mr. Doherty stated that idea was being considered but cautioned getting anything through Congress would be difficult. Sen. Shockley noted the length of time involved in having the court decide all the issues.
- 02:03:56 Sen. Shockley wondered why Wyoming was being so difficult. Director Maurier thought Wyoming believes the bar was set at 100 wolves and ten breeding pairs, and that Wyoming has met the bar. Director Maurier explained that agriculture is important in Wyoming, and the Wyoming Legislature is dominated by agricultural interests and has paid U.S. Wildlife Services for predator response. Director Maurier also explained that Wyoming will pay 7:1 on a sheep and 3:1 on a cow for losses from wolves.
- 02:07:05 Rep. Dickenson asked Director Maurier and Mr. Doherty what has been done to work with the Tribes on the wolf issues. Mr. Doherty responded that discussions regarding wolf issues have mainly been confined to the parties involved in the litigation. Mr. Doherty stated there are five factors and one of the factors is whether the state has adopted an effective management plan which would have been developed through a public process.
- 02:10:03 Director Maurier deferred the question to Carolyn Sime.
- 02:11:41 Carolyn Sime, Wolf Management Specialist, described the interaction with the Tribes as having occurred early and often. Ms. Sime believed a strong network was developed with tribal biologists and natural resource specialists.
- 02:14:46 Rep. Dickenson asked Mr. St. Goddard whether it is a philosophical clash that exists regarding wolf management. Mr. St. Goddard explained that a lot of the communication is not that intense. Mr. St. Goddard stated he has always had faith in the State of Montana but believed mistakes are being made. Mr. St. Goddard did not want the killing of wolves. Mr. St. Goddard believed Ms. Sime's reference to consultation with the Tribes was very broad. Mr. St. Goddard stated it is not a philosophical belief but a scientific approach.
- 02:21:19 Rep. Smith acknowledged FWP's work on the wolf issue and thought maybe Wyoming was right and Montana should join Wyoming. Director Maurier stated there is a lawsuit pending in the Tenth Circuit Court of Appeals. Director Maurier suggested going with Wyoming could result in Montana's complete inability to manage wolves.
- 02:24:05 Rep. Wilmer noted the September 3 letter from Governor Schweitzer to the Secretary of the Interior and asked whether the Secretary of the Interior supported any of Governor Schweitzer's ideas. Mr. Doherty responded all options are being considered.
- 02:25:43 Rep. Wilmer explained she has heard opinions on both sides of the issue and asked what would happen to the successful program if there were no fees to be gained from holding a wolf hunt. Director Maurier explained federal money would

be used. Rep. Wilmer asked if he was aware of the bill draft which would take licensing fees out of FWP and place the fees in the general fund. Director Maurier identified that issue as being huge since Montana would also lose its eligibility for federal money.

- 02:32:03 Rep. French asked Mr. St. Goddard whether he was testifying as a representative of the Tribal Council, and Mr. St. Goddard clarified he was testifying as an individual and not as a representative of the Tribal Council.
- 02:32:58 Sen. Ripley asked about the Blackfeet's management plan. Mr. St. Goddard explained the Blackfeet Fish and Game Committee and Elder Council have both been involved in wolf issues. Mr. St. Goddard stated he has extensive information that would help stop the killing. Chairman Vincent clarified that he was looking for specific information.
- 02:37:04 Sen. Hamlett asked Director Maurier to explain the jurisdictional differences and whether the Tribes could manage the wolf on their own. Director Maurier explained that Tribes are sovereign nations and can do whatever they want; however, a Tribe would have to have a management plan if it were going to hunt an endangered species. Mr. Lane addressed the question and explained the Blackfeet Tribe must have an approved management plan. Sen. Hamlett wondered if even a sovereign nation has to yield to the federal government. Mr. Lane explained the U.S. Supreme Court has described the tribes as "domestic dependent sovereigns" and that description could be applied to states as well.
- 02:41:15 Sen. Hamlett asked Mr. Doherty to address the separate delisting of zones for grizzly bears. Mr. Doherty offered to provide the information to Sen. Hamlett.
- 02:42:37 Chairman Vincent referenced a letter received from the Governor of Idaho and asked whether the letter had been answered. Mr. Doherty responded the letter had not been answered. Chairman Vincent noted the U.S. Fish and Wildlife Service approved Wyoming's wolf management plan in 2006 and suggested that may have been why Wyoming is sticking to its guns.
- 02:44:40 Mr. Lane explained the history behind Wyoming's wolf management plan. Chairman Vincent asked whether there had been a decision regarding the 10(j) conservation hunt. Mr. Lane responded the next round of briefing is due October 7 and then the issue will be submitted to the judge for a decision. Chairman Vincent wondered how many hunting seasons would be lost. Mr. Lane did not think the decision would take very long. Mr. Lane explained even if Montana prevails in the Ninth Circuit, Montana will not have a season this year and maybe not even next year. Chairman Vincent stated he did not have much faith that the Ninth Circuit would rule in favor of Montana. Chairman Vincent suggested every time Montana negotiates, the goal post gets moved further away.
- 02:55:22 Mr. Cebull observed there are two judges involved that are on equal footing and wondered what would happen if there were two conflicting decisions issued. Mr. Lane agreed that was a possibility and conflicting decisions in different Circuits is one reason the U.S. Supreme Court would hear a case.

02:57:05 Sen. Hamlett asked if it would be possible for a Native American to sit on the FWP Board of Commissioners. Director Maurier agreed that was a possibility.

(BREAK)

AGENCY OVERSIGHT: FWP--MAINTENANCE ACCOUNT REPORT

03:16:07 Mr. Van Genderen reviewed "Fish, Wildlife and Parks Maintenance Accounts Report" ([EXHIBIT 9](#)).

Dave Risley, Fish & Wildlife Division Administrator, FWP

03:19:10 Dave Risley, Fish and Wildlife Division Administrator, continued explaining Exhibit 9.

Public Comment

There was no public comment.

Question & Discussion--EQC

03:21:29 Chairman Vincent asked how much of the Fish Creek Acquisition FWP would have. Mr. Van Genderen responded 6,200 acres. Chairman Vincent asked whether that included Best Management Practices (BMP) road work done as well. Mr. Van Genderen responded knapweed is an issue at the site and that there are highway dollars available to initiate management of the area.

03:22:41 Mr. Cebull commented he did not see Spotted Dog in the report and wondered how Spotted Dog would be incorporated into the projection. Mr. Van Genderen stated Spotted Dog will be a Wildlife Management Area (WMA).

03:23:25 Mr. Risley clarified the Spotted Dog acquisition came with its own maintenance account and will have its own funds. Mr. Cebull wanted to know if the funding came from the same source as the money for the land acquisition. Mr. Risley stated it was \$1.2 million and the money came from the Natural Resource Damage (NRD) fund.

03:24:22 Sen. Ripley wondered what would happen after five years. Mr. Risley explained the funding would have to be programmed through FWP's regular budget.

Council Action, if any, and Directions to Staff

There was no EQC action.

AGENCY OVERSIGHT: FWP--Crucial Areas Planning System

03:25:29 Director Maurier commented the effort is non-regulatory and was meant to outline the crucial habitat areas around the state, so people would be informed

as to the location of wildlife habitat areas, and to standardize the existing data and capture and utilize information gathered by state biologists.

T.O. Smith, Data Services, FWP

03:28:01 T.O. Smith, Bureau Chief, Strategic Planning, provided an overview of the Crucial Areas Assessment, Layer Documentation Summary ([EXHIBIT 10](#)).

Public Comment

03:36:12 Kerry White, Bozeman, believed the Crucial Areas Assessment is a regulatory document, and Mr. White read excerpts from a past presentation given by Doris Fischer, FWP. Mr. White testified that Ms. Fischer had indicated FWP wants to be a land planning organization. Mr. White recalled Ms. Fischer stating the smaller the setback, the greater the human encroachment. Mr. White suggested the presence of wildlife could actually devalue property. Mr. White commented he was very upset with FWP and urged the EQC to take a look at the issue.

Questions & Discussion--EQC

03:42:05 Sen. Ripley asked Mr. White where he got his statistics. Mr. White explained the statistics came from "Recommendations for Montana's Model Subdivision Regulations, June 2010" ([EXHIBIT 11](#)).

03:43:07 Dave Galt, Director, Montana Petroleum Association, provided a history of the Crucial Areas Assessment program. Mr. Galt explained how the program is being considered as a prototype in the West. Mr. Galt believed there are useful applications from a planning perspective. Mr. Galt displayed a map depicting "Hunter and Angler Valued Areas in Montana." Mr. Galt stated he does not believe hunting and energy development are incompatible and did not like that message being delivered. Mr. Galt suggested the EQC should ensure that FWP's data sets are science and ground validated.

03:48:21 Glenn Oppel, Montana Association of Realtors, expressed concern about FWP's work and the science the work was based on. Mr. Oppel also disagreed the ideal that the document is non-regulatory. Mr. Oppel was afraid other entities and local governments may adopt the model subdivision regulations. Mr. Oppel clarified he was not suggesting that developers ignore state law requirements regarding impacts to wildlife, water, and agriculture.

03:57:51 Mike Murphy, Montana Water Resources Association, believed it was important to look at how far the issue would go and suggested it is a private property rights issue that could also impact irrigation practices and the use of structures.

03:59:28 Dustin Stewart, Executive Director, Montana Building Industry Association, admitted that in the past there have been points of contention between the FWP biologists and developers. Mr. Stewart believed the program and model regulations will lead to a significant increase in subdivision regulations at the local level and an increase in litigation.

- 04:02:31 Janet Ellis, Montana Audubon, expressed concern about the discussion of model subdivision regulations since that was not the agenda item listed. Ms. Ellis testified that Montana Audubon has been a guinea pig for the Crucial Areas Planning System (CAPS) program and thought the program would be a useful tool for land use planning by local governments, but thought local governments may also become frustrated.
- 04:07:08 Ben Lamb, Montana Wildlife Federation, agreed with Ms. Ellis. Mr. Lamb explained many Montana Wildlife Federation members were involved in developing the wildlife/angling map. Mr. Lamb agreed that hunting, angling, and energy development can co-exist. Mr. Lamb suggested hunting could also be used as a tool.
- 04:12:53 Sen. Debby Barrett, SD 36, submitted copies of a letter dated March 21, 2007, that she wrote to Governor Schweitzer (**EXHIBIT 12**). Sen. Barrett believed land management is beyond the scope of the duties empowered to FWP. Sen. Barrett was curious where FWP got its authority and what public process was utilized. Sen. Barrett suggested the EQC request a legislative performance audit of the Crucial Areas Assessment Planning System (CAPS).

Council Action, if any, and Directions to Staff

- 04:19:34 Rep. Smith noted the partnerships listed on the website and commented he did not see any representation for Mr. Galt or Mr. Smith. Director Maurier clarified there are two issues: The CAPS program and the draft subdivision best practices, which Director Maurier admitted he had not reviewed. Director Maurier cautioned the two were completely separate and distinct issues. Director Maurier explained the effort was to capture all information regarding wildlife values in Montana. Director Maurier believed CAPS is non-regulatory and is really just a map. Director Maurier explained the effort to allow for ease of transmission line development across western states. Director Maurier stated FWP relies on groups that have been performing research all along. Rep. Smith thought private landowners would have more information about their own property. Rep. Smith suggested FWP might not be partnering with the right people to manage the wildlife in Montana.
- 04:25:32 Mr. Smith agreed with Ms. Ellis that the information should have been provided to the EQC in three separate presentations. Mr. Smith explained CAPS is a science-based attempt to consolidate information. Rep. Smith explained that setting up a core group should include all the interested parties.
- 04:30:06 Mr. Cebull wanted to know in which layer he could find the hunter value map. Mr. Smith explained the recreational information portion is still being developed. Mr. Cebull believed it is subjective information and not scientific and highly recommended all subjective and emotional based data should be removed. Mr. Smith appreciated the suggestion and clarified the CAPS is a tool that will change and be refined through the future. Mr. Smith welcomed public comment.

- 04:34:06 Rep. Wilmer asked Mr. Stewart to explain how the map went beyond being a useful tool. Mr. Stewart explained how all the tools interact with each other and the current difficulties in the process. Rep. Wilmer asked whether Mr. Stewart's earlier comments were directed toward Exhibit 10 or Exhibit 11. Mr. Smith stated his comments were directed to both documents. Mr. Smith clarified the model subdivision recommendations are intended to supply predictability and consistency. Mr. Smith explained his understanding of the issue and emphasized they are simply recommendations, and FWP will never be the decisionmaker.
- 04:41:02 Sen. Ripley asked about the assessment being part of a larger conservation effort and whether that effort includes the Model Subdivision Regulations. Mr. Smith identified a need to expedite transmission development for energy. Mr. Smith stated that mineral rights protest is not part of the larger conservation effort. Sen. Ripley asked where the funding for CAPS came from. Mr. Smith explained CAPS has been funded internally by reallocating time and has not increased FWP's budget. Mr. Smith also identified additional outside grants. Sen. Ripley requested a breakdown of CAPS funding.
- 04:45:24 Ms. Conradi asked if the bulk of the underlying data is publicly available. Mr. Smith agreed. Ms. Conradi agreed sometimes FWP participates at the last minute and wondered whether FWP would now participate earlier. Mr. Smith agreed having the information available to other parties would be helpful and could reduce the number of requests for information. Ms. Conradi asked if it would assist FWP in making determinations on a site-by-site basis. Mr. Smith agreed.
- 04:49:57 Sen. Hamlett asked whether FWP had ever asked landowners to report wildlife sightings on their property. Mr. Smith could not answer but stated his Bureau had not requested the information. Mr. Risley added citizen science is used in several programs, but cautioned sometimes there are issues of credibility.
- (LUNCH)
- 05:57:32 Mr. Everts directed the EQC members to the followup memo from George Mathieus regarding the nutrient work group ([EXHIBIT 13](#)).

AGENCY OVERSIGHT: FWP--DEER MANAGEMENT/HAVRE AREA

Introduction

- 05:58:28 Rep. Wendy Warburton, HD 34, explained difficulties with deer in the Havre area and the associated expenses for property loss, insurance premium increases, and loss of human life. Rep. Warburton explained that her constituents have also expressed concern about FWP's recent land acquisitions. Rep. Warburton outlined the various ideas for controlling the deer.

Dave Risley, Fish & Wildlife Division Administrator, FWP

06:08:05 Dave Risley, Administrator, Fish & Wildlife Division, FWP, spoke about past experiences in addressing deer overpopulation. Mr. Risley stated FWP is willing to sit at the table and work on reasonable solutions. Mr. Risley thought there were more than enough licenses available, but there is a need to focus hunters on harvesting does. Mr. Risley acknowledged that access to private land is also an issue. Mr. Risley stated relocation of the deer is a possibility, but noted relocation is risky and expensive.

Public Comment

There was no public comment.

Questions & Discussion--EQC

06:18:52 Mr. Pattison hoped Mr. Risley was not implying that landowners were simply not opening their land for hunting when there may be other issues that limit access for hunters. Mr. Pattison also thought if FWP was responsible for picking up the dead game on the highway instead of the Department of Transportation, FWP might be more diligent in managing the wildlife. Mr. Risley agreed the lack of hunting opportunities might be due to other factors. Mr. Risley emphasized that picking up road kill is very time consuming and labor intensive.

06:21:36 Rep. French wanted to know how many deer would need to be eliminated. Pat Gunderson, Regional Supervisor for Northeastern Montana, thought the number was significant and noted there are 5,000 Region 6 whitetail deer licenses and currently about one-half of those licenses have been sold. Rep. French wanted to know who makes the rules about deer injured along the highways. Mr. Risley noted FWP sets the rules for the taking of wild game.

06:24:10 Sen. Hamlett wondered if it is legal for a citizen to stop on the road and kill a deer that has been hit. Mr. Risley said no, but they could get verbal permission from a Game Warden.

06:25:04 Chairman Vincent asked about the optional B tags purchased over the counter and Mr. Risley stated a person could purchase seven tags at one time.

06:26:06 Mr. Pattison asked whether there has been an overabundance of deer tags left over at the end of the season. Mr. Gunderson responded the tags sold out at the end of the season. Mr. Pattison noted the good quality of FWP personnel in the Havre area.

Council Action, if any, and Directions to Staff

There was no action taken.

UPDATE ON PUBLICATION OF SJR 28 (RECYCLING) AND HJR 15 (TOURISM AND RECREATIONAL ACCESS STUDY REPORTS--Ms. Stockwell

06:29:43 Ms. Stockwell explained SJR 28, the Study of Recycling, has gone out for publication. Ms. Stockwell thanked Maureen Theisen, Legislative Environmental Policy Office, for her work. The Tourism and Recreational Access Study Report is also ready for publication.

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

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

- 06:33:38 Ms. Stockwell submitted and reviewed "Petroleum Tank Release Fund, Status Report, September 2010" (**EXHIBIT 14**) and "Board Staff Report, Revenue and Expenses" (**EXHIBIT 15**).
- 06:34:41 Rep. Dickenson asked if the claims expenditures included subrogation actions against insurance companies. Ms. Stockwell explained the claims expenditures only includes direct payments to operators.
- 06:36:28 Ms. Stockwell directed the EQC to LC 7010, which would authorize the use of mixing zones in the remediation and closure of petroleum tank release sites (**EXHIBIT 16**). Ms. Stockwell also submitted LC 7011, which refers to "petroleum mixing zone" rather than just "mixing zone" (**EXHIBIT 17**). Ms. Stockwell submitted additional language changes suggested by the Petroleum Tank Release Compensation Board, and stated she had not had an opportunity to verify the language (**EXHIBIT 18**).

Public Comment

- 06:47:07 Sandi Olsen, DEQ, stated the DEQ generally supports LC 7011, but has one area of concern. Ms. Olsen commented that she appreciated the work of the parties. Ms. Olsen explained the DEQ was concerned that some of the language would preclude reopening a site when additional contaminants are discovered that create an unacceptable risk to human health or the environment.
- 06:49:28 Terry Wadsworth, Executive Director, Petroleum Tank Release Compensation Board, stated he was available for questions.
- 06:49:42 Ronna Alexander, Petroleum Marketers and Convenience Store Association, stated LC 7011 is the better legislation.

Questions & Discussion--EQC

- 06:50:32 Rep. Dickenson moved to approve LC 7011. The motion carried unanimously by voice vote. Ms. Conradi, and Sen. Keane voted aye by proxy. Sen. Keane will sponsor the bill.

(BREAK)

CONTINUED COUNCIL DISCUSSION OF ANY STATUTORY RECOMMENDATIONS AND POSSIBLE LEGISLATION--if necessary

LC 7000 (Cont'd)

- 07:06:42 Ms. Stockwell provided information for Oregon, Wyoming, and Washington. Oregon's DEQ does not require a permit for portable forestry equipment such as chippers and grinders; Wyoming's DEQ stated if portable equipment is being moved from site to site, a permit would not be required; however, it is reviewed on a case by case basis. In Washington, air quality permits are required depending on where the work is being done.
- 07:08:37 Ellen Simpson, Montana Wood Products Association, provided additional statistics regarding air-quality permits for portable grinders and chippers in other states.
- 07:10:11 Rep. Wilmer moved the EQC adopt the revised amendment which included a definition for forested lands (**EXHIBIT 19**).
- 07:13:49 Mr. Cebull requested additional information regarding the motion. Mr. Cebull asked Ms. Stockwell to read the current definition of "forested lands." Ms. Stockwell read the definition and noted the definition Rep. Wilmer wanted to use is in the tax code. Mr. Cebull stated he did not quite understand the definition or where it would apply.
- 07:16:11 Jason Todhunter, Montana Logging Association, clarified the definition and stated the DNRC has a map of forested lands in Montana and there are only small patches of land in the Billings area that meet the definition.
- 07:17:54 Rep. Wilmer stated if the land is taxed as forested land, then it is forested land by definition.
- 07:18:42 Mr. Cebull suggested that adding this type of language and referencing the definition in the tax code would make it more difficult and complicated than it needs to be and the intent of LC 7000 was to make it easier to develop the resource.
- 07:20:04 Sen. Ripley agreed with Mr. Cebull and thought it was unclear what the amendment would do.
- 07:21:00 Rep. Wilmer agreed the purpose of LC 7000 was to lift permitting, so it will be easier to produce biomass.
- 07:22:13 Sen. Shockley recalled the emphasis was on forest land. Sen. Shockley suggested stating that in an incorporated city or town, a permit would be needed. Rep. Milburn thought cities would probably already have zoning restrictions. Chairman Vincent agreed there would probably already be local control.

- 07:24:16 Ms. Fitzpatrick commented the definition clearly refers to commercial operations. Ms. Fitzpatrick thought the size of the machinery would also be pertinent.
- 07:25:07 Charles Homer, Permitting and Compliance Manager, DEQ, confirmed there is a permitting threshold adhered to by the DEQ.
- 07:26:49 Rep. French emphasized the legislation originally had to do with forested lands and wondered why towns and cities were being discussed. Chairman Vincent responded the intent was to provide incentives for landowners to provide defensible space and get rid of dead trees in the Wildland Urban Interface (WUI). Rep. French asked whether there were two different sizes of machinery being discussed. Rep. French wanted to know if someone would use a large chipper to clear an acre and one-half. Chairman Vincent responded it would depend on what the landowner was trying to clear off the property.
- 07:30:46 Sen. Shockley was confused why the course of the conversation carried on from forested lands to cities.
- 07:31:22 Rep. Wilmer stated she was proud of the Constitution and saw a need to find a way to promote business and keep a clean and healthful environment. Chairman Vincent commented that cities and towns did not know until last June that they had to get a permit. Rep. Wilmer withdrew her motion.
- 07:34:02 Rep. Wilmer made a substitute motion to remove the permitting requirements on all lands except incorporated cities.
- 07:35:48 Sen. Tropila asked Mr. Todhunter if he favored the amendments. Mr. Todhunter believed it was better than using the forested land definition. Rep. Wilmer's motion carried 10-6 by roll call vote. Mr. Everts stated staff will ensure the language complies with bill drafting standards.
- 07:38:47 Rep. Milburn understood the attempt, but stated the EQC should proceed with caution. The motion to proceed as amended carried unanimously with Sen. Tutvedt and Sen. Keane voting aye by proxy. Chairman Vincent agreed to carry the bill.

EQC Final Biomass Report

- 07:41:00 Ms. Stockwell stated the biomass study report had changed little since July and the final report will include the updated bill drafts and the letter to Governor Schweitzer. The presentations on biochar and the algae aqua culture technologies will also be incorporated.
- 07:41:44 Rep. Dickenson moved the report forward for publication. The motion carried unanimously by voice vote with Sen. Keane and Sen Tutvedt voting by proxy.

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

There was no further public comment.

OTHER BUSINESS

- 07:42:53 Sen. Ripley recalled information on the CAPS program and moved the EQC should request a performance audit of the CAPS program.
- 07:43:45 Rep. Dickenson requested information on the audit process and the cost. Mr. Everts explained the process and that the Legislative Audit Committee will vote on a list of suggested performance audits. A letter would be sent from the EQC to the Audit Committee. The cost of the audit would depend on staff resources and the scope of the audit.
- 07:46:10 Rep. French clarified the Audit Committee prioritizes the requests, and the cost is already included in the Audit Committee's budget. Mr. Everts agreed.
- 07:47:09 Ms. Fitzpatrick commented a performance audit would also impact the work of the FWP which would result in an additional cost. Ms. Fitzpatrick asked what Sen. Ripley's concerns were with CAPS. Sen. Ripley wondered whether CAPS includes subdivision recommendations, outside funding, and whether there was a public process that occurred.
- 07:48:47 Tori Hunthausen, Legislative Auditor, thought the likelihood of having the audit completed before the legislative session would be minimal. Ms. Hunthausen stated the audit would not result in any additional cost. Sen. Ripley stated this is the normal process and the audit request may not be accepted. Sen. Ripley thought it was the EQC's responsibility to at least request the audit.
- 07:50:38 Ms. Fitzpatrick stated she thought Mr. Smith responded to Sen. Ripley's concerns.
- 07:50:59 Mr. Cebull commented that he would also like consideration given to the scope and source of the underlying data in the CAPS program.
- 07:51:32 Ms. Conradi asked if there was anything less than an audit that could answer the outstanding questions.
- 07:52:47 Sen. Shockley stated he was not satisfied with the FWP's answers regarding funding.
- 07:53:09 Sen. Hamlett thought it was obvious there was a cloud over the issue.
- 07:53:54 Rep. French stated a performance audit can work both ways and would give FWP an opportunity to fine tune the CAPS program. Rep. French thought a performance audit would be a positive step.

07:54:58 Rep. Wilmer was also concerned about the disconnect between those who created the document and those who use the document. Tori Hunthausen, Legislative Auditor, stated specific requests should be included in the audit request. Sen. Ripley's motion to request an audit of the CAPS program carried unanimously, with Sen. Tutvedt and Sen. Keane voting by proxy. Mr. Everts stated he would draft a letter to the Legislative Auditor.

07:57:38 Chairman Vincent suggested the EQC send a letter to the DOI and the Department of Justice encouraging aggressive pursuit of other wolf management options.

07:58:32 Sen. Ripley moved the EQC send a letter to the Department of Interior and the Department of Justice encouraging aggressive pursuit of other wolf management options. Sen. Ripley agreed it would be good to support FWP.

08:01:09 Sen. Hamlett agreed this is where legislators need to step up and support FWP. The motion carried unanimously with Sen. Tutvedt and Sen. Keane voting by proxy.

08:02:02 Rep. Milburn suggested going through Congress would also be an option and could be accomplished by Resolution.

08:02:42 Rep. Wilmer agreed and thought there could be bipartisan support.

08:03:14 Sen. Hamlett thought the support by the EQC public members would also be helpful. Rep. Milburn moved a letter be sent to Montana's congressional delegation encouraging aggressive pursuit of other wolf management options. The motion carried unanimously by voice vote with Sen. Tutvedt and Sen. Keane voting by proxy.

08:06:17 Mr. Everts noted the interim would end the next day and the language would need to be drafted and requested leeway to work with the sponsor.

08:06:55 Rep. Dickenson stated she did not want to have a committee resolution since the EQC would not be meeting again. Rep. Dickenson would rather see legislators move forward individually.

08:07:54 Sen. Ripley asked when the EQC's budget ended. Mr. Everts responded business must be wrapped up by September 15, and the EQC has adhered to the Legislative Council rules in the past. Rep. Milburn and Rep. Wilmer stated they would put in their own bill drafts.

08:10:03 Sen. Hamlett stated he wished to go forward with the Resolution. Rep. Milburn suggested a better job could be done if there was more time.

08:12:04 Ms. Conradi asked Sen. Hamlett why he would like to see a resolution. Sen. Hamlett thought a resolution from the EQC would include bipartisan and public support. Mr. Everts stated a resolution could happen, but usually the EQC adheres to the deadlines set by the Legislative Council.

- 08:13:56 Rep. Milburn moved the EQC submit a Committee Resolution and that Chairman Vincent, Sen. Hamlett, Rep. Wilmer and Rep. Milburn review the Resolution. The motion carried with Rep. Dickenson voting no and Sen. Tutvedt and Sen. Keane voting aye by proxy.
- 08:17:20 Chairman Vincent complimented staff and depicted the EQC's staff as the best in the legislative process.
- 08:17:56 Rep. French pointed out the audit staff received a national award for its audit of the Upland Game Bird program.
- 08:18:25 Sen. Tropila noted that Mr. Cebull, Rep. Dickenson, and Sen. Shockley would be termed out from serving on the EQC and thanked them for all their work.

ADJOURNED at 4:20 p.m.

Additional Exhibits:

Letter addressed to Chairman Vincent from Tricia Stabler, Cameron, Montana (**EXHIBIT 20**).

Letter addressed to Chairman Vincent from Lorraine Snipper (**EXHIBIT 21**).

Photos from Dave Arterburn (**EXHIBIT 22**).

Letter from Duane Thexton (**EXHIBIT 23**).

Letter from Maxine Korman (**EXHIBIT 24**).

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