



# ENVIRONMENTAL QUALITY COUNCIL

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ED LIESER  
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KERRY WHITE

**SENATE MEMBERS**  
JOHN BRENDEN--Chair  
JENNIFER FIELDER  
BRADLEY MAXON HAMLETT  
JIM KEANE  
RICK RIPLEY  
GENE VUCKOVICH

**PUBLIC MEMBERS**  
SCOTT ASPENLIEDER  
DEXTER BUSBY  
MARY FITZPATRICK  
ROY MORRIS

**COUNCIL STAFF**  
JASON MOHR, Research Analyst  
SONJA NOWAKOWSKI, Research Analyst  
HOPE STOCKWELL, Research Analyst  
HELEN THIGPEN, Staff Attorney  
NADINE SPENCER, Secretary  
JOE KOLMAN, Legislative Environmental Analyst

## MINUTES LOG

May 15, 2014

Room 317, State Capitol Building  
Helena, Montana

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

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select *Committees*, then *Interim*. Once on the page for *Interim Committees*, scroll down to the appropriate committee. The written minutes summary, along with the audio and video recordings, are listed by meeting date on the interim committee's web page.

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

### COMMITTEE MEMBERS PRESENT

SEN. JOHN BRENDEN, Chair  
REP. BILL MCCHESENEY, Vice Chair

SEN. JENNIFER FIELDER  
SEN. BRADLEY MAXON HAMLETT  
SEN. JIM KEANE  
SEN. RICK RIPLEY  
SEN. GENE VUCKOVICH

REP. JERRY BENNETT  
REP. VIRGINIA COURT  
REP. ED LIESER  
REP. JEFFREY WELBORN  
REP. KERRY WHITE VIA PHONE

MR. SCOTT ASPENLIEDER  
MR. DEXTER BUSBY  
MS. MARY FITZPATRICK  
MR. ROY MORRIS

### **STAFF PRESENT**

JASON MOHR, Research Analyst  
SONJA NOWAKOWSKI, Research Analyst  
HOPE STOCKWELL, Research Analyst  
HELEN THIGPEN, Staff Attorney  
NADINE SPENCER, Secretary  
JOE KOLMAN, Legislative Environmental Analyst

### **AGENDA & VISITORS' LIST**

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

### **COMMITTEE ACTION**

- The Environmental Quality Council voted to send a letter encouraging the Interagency Grizzly Bear Committee (IGBC), and all appropriate state and federal agencies, to update the grizzly bear recovery plan and other related resource management plans so that they are based upon the best available science.

### **CALL TO ORDER AND ROLL CALL**

- 00:00:01 Sen. Brenden called the meeting to order at 8:18 a.m. The secretary called the roll, [Attachment 3](#).
- 00:01:12 Joe Kolman, Legislative Environmental Analyst, Legislative Services Division (LSD), provided the EQC with a list of the members of the Montana Heritage Commission, [Exhibit 1](#), and a copy of the statute that lists how the members are appointed, [Exhibit 2](#).

### **AGENDA**

#### **ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE UPDATE**

- 00:01:35 Sonja Nowakowski, Research Analyst, LSD, gave a report from the Energy and Telecommunications Interim Committee meeting in Great Falls on May 8-9.

## STATE WATER PLAN UPDATE

00:05:41 Tim Davis, Administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC), gave an update on the State Water Plan, [Exhibit 3](#), and said that the DNRC is in the process of getting public comment on the four draft basin plans.

**Public comment** None

### **Committee questions and discussion**

00:09:15 Sen. Fielder asked if adequate notice was given for the public comment period. Mr. Davis said notices were sent out to newspapers, but some papers did not run the notice until after the meeting date. He said that notices were also sent to more than 200 individuals and organizations and the notice was on the DNRC website.

00:10:58 Sen. Fielder said that because some of the meetings did not receive adequate notice the public was unable to participate. Sen. Brenden said that it is a common problem with some of the smaller newspapers.

00:11:45 Sen. Fielder said that the notices were paid advertisements. Mr. Davis said that the notices that were sent out were press releases and not paid advertisements. He said that the DNRC will make sure that the notices go out earlier in the future.

00:12:18 Sen. Fielder said that the notice she saw was a paid advertisement that was put in the newspaper after the meeting occurred. Sen. Brenden said it has been a problem in the past. Mr. Davis said they also send out individual notices to interested individuals and to people who have participated in the past.

00:13:38 Sen. Brenden said that water is an important issue and they just need to try and make the notification process better.

00:13:53 Rep. Court asked about concern over contamination of the aquifer on the Fort Peck Reservation and if the state is involved. Mr. Davis said that he did not have any information on it, but he will look into it.

00:14:42 Sen. Brenden said that he is familiar with the problem and said that it affected more than one well.

00:15:15 Rep. Court asked who is responsible. Sen. Brenden said that he did not know. Mr. Kolman said that staff will try and find out more information.

00:15:38 Ms. Fitzpatrick asked how the State Water Plan is going to assess new industrial development and how the DNRC will decide how much water can be permanently taken out of the hydrological cycle. Mr. Davis said it will go through the normal permitting process. He said they will be projecting how much demand will likely be in different sectors and how that demand will be met.

00:17:24 Mr. Aspenlieder asked if the DNRC will be adding water quality issues to the State Water Plan. Mr. Davis said that water quality has been raised by some of the basin advisory councils as part of the different draft recommendations. He said that the DNRC will not be making any recommendation to the State Water Plan that is not in its purview and if a recommendation is made involving another agency, that agency will have to support the recommendation.

00:18:31 Mr. Aspenlieder said that he agreed and said water quality is best left with the Department of Environmental Quality (DEQ).

## **WATER POLICY INTERIM COMMITTEE UPDATE**

00:19:26 Jason Mohr, Research Analyst, LSD, gave an update on the Water Policy Interim Committee (WPIC) meeting on May 12-13.

### **Public comment**

00:26:49 Krista Lee Evans, Senior Water Rights Coalition

00:30:21 John Youngberg, Montana Farm Bureau Federation

### **Committee questions and discussion**

00:32:03 Sen. Keane asked if focus is being diverted away from the water adjudication process by the study that is being done on the future role of the water court. Ms. Evans said that it is good to be proactive and look at the issues, but they need to finish the adjudication process first.

00:34:46 Sen. Hamlett commented on some of the issues that were discussed at the WPIC meeting involving the water adjudication process and the Confederated Salish and Kootenai Tribe (CSKT) Water Compact.

00:38:13 Sen. Fielder commented on the WPIC meeting including the threat that was made to bring additional water right claims if the CSKT Water Compact is not ratified.

00:40:58 Sen. Hamlett said if the CSKT Water Compact is not ratified additional water right claims will be filed. He said that the economic study that is being done will address what will happen if there is a compact or if there is not a compact.

## **FWP WOLF MANAGEMENT UPDATE**

00:42:05 Jeff Hagener, Director, Fish, Wildlife and Parks (FWP), provided an update on wolf management, [Exhibit 4](#).

00:44:50 Mr. Baker entered the meeting.

## **Public comment**

- 00:46:55 Jay Bodner, Montana Stockgrowers Association  
00:48:10 Nick Gevock, Montana Wildlife Federation (MWF)

## **Committee questions and discussion**

- 00:50:19 Sen. Ripley asked if there is a maximum count on the number of wolves. Mr. Hagener said the maximum count may be 800 to 850 wolves.
- 00:50:56 Sen. Ripley asked that since livestock predation is down if they have a good feeling on how accurate the counts are or if people are not reporting predation. Mr. Hagener said the U.S. Department of Agriculture (USDA), Wildlife Services, compiles the data and they think it is pretty accurate and that predation is down.
- 00:51:47 Sen. Ripley asked if FWP gets many reports of wolf sightings. Mr. Hagner said they do not.
- 00:52:19 Rep. Bennett asked about FWP's plan to purchase assault rifles. Sen. Brenden asked about the rifles as well.
- 00:53:21 Mr. Hagener said FWP is upgrading rifles that are outdated and no longer functional.
- 00:53:54 Mike Korn, Deputy Chief of Law Enforcement, FWP, said rifles currently being used by FWP were received from army surplus in the 1990s and that their parts are becoming obsolete. He said FWP looked for durability, utility, and practicality when considering replacement rifles.
- 00:58:49 Sen. Brenden asked about the impression FWP will make using assault rifles. Mr. Korn said wardens are defined by what they do in the field and not by their equipment.
- 01:00:10 Sen. Hamlett asked if the federal government will allow the state to sell the old M14 rifles into the collector's market to defer the cost of the new assault rifles. Mr. Korn explained the process for disposal of the old rifles.
- 01:01:18 Sen. Ripley asked if replacement rifles were discussed during the budgeting process. Sen. Brenden said he was not aware of any discussion.
- 01:02:07 Sen. Keane said he does not remember discussing replacement rifles during the budget process. He asked if replacement rifles can be obtained through the federal government from the excess equipment program. Mr. Korn said the only rifles available from the excess equipment program are Vietnam era M16s.
- 01:04:57 Sen. Keane asked Mr. Korn to provide a letter showing that FWP requested firearms through the Federal Personal Property Donation Program. Mr. Korn said they currently have 12 M16's in the warehouse.

- 01:05:25 Sen. Keane said he is referring to firearms similar to the ones they are intending to purchase and would like to see, in writing, that FWP has no way of obtaining the rifles from the Federal Surplus Personal Property Donation Program. Mr. Korn said that he will look into it.
- 01:06:11 Sen. Keane said he wants to make sure that Montana isn't paying for rifles that may be free from the federal government. Mr. Korn said that he understands. Sen. Keane said that he wants to make sure that an upgraded firearm, similar to the assault rifles that FWP wants to purchase, is not available.
- 01:07:09 Rep. White asked about ammunition availability and cost for the proposed rifles. Mr. Korn said that ammunition is available.
- 01:08:13 Sen. Brenden asked if FWP has better access to ammunition than the general public. Mr. Korn said that it does not.
- 01:08:53 Sen. Hamlett asked if FWP is aware of and monitoring the unintended consequence, with reintroduction of the wolf, of the dispersal of elk herds infected with brucellosis into other parts of Montana. Mr. Hagener said that FWP monitors all of the elk herd populations in the state and is working with the Montana Department of Livestock (MDOL) to minimize the risk to livestock operators.

#### **GRIZZLY MANAGEMENT UPDATE**

- 01:10:07 Mr. Hagener, FWP, gave an update on conservation strategies for grizzly bears in Southwestern and Western Montana, [Exhibit 5](#).

#### **Public comment**

- 01:18:54 Mr. Gevock, MWF

#### **Committee questions and discussion**

- 01:21:46 Sen. Brenden asked why Eastern Montana is considered grizzly bear habitat. Mr. Hagener said FWP does not consider it grizzly bear habitat in its management plan, but he said U.S. Fish and Wildlife Service (USFWS) considers it as habitat in a broad context.
- 01:22:46 Sen. Fielder said that the Grizzly Bear Recovery Plan, published by the USFWS in 1993, is outdated. She provided a copy of a letter that was signed by 26 elected officials in Northwest Montana recommending to the Interagency Grizzly Bear Committee (IGBC) that the plan be updated so it is based upon today's best available science, [Exhibit 6](#).
- 01:26:20 Rep. White asked about an objection that was filed by FWP on the Blackfoot Travel Plan. Mr. Hagener said the objection was filed because the U.S. Forest Service (USFS) changed its procedure and if FWP did not object it would not have an opportunity to discuss the travel plan.

- 01:28:29 Rep. White said that he did not understand the philosophy of FWP's objection to the travel plan.
- 01:29:50 Sen. Ripley asked about FWP's objection to the Stonewall access site. Mr. Hagener said that he did not know all of the details of the full objection and deferred the question to Pat Flowers, Supervisor, Region 3, FWP.
- 01:30:37 Sen. Ripley also asked if Snow Belt Trail is included in the objection. Mr. Flowers said the objection was tied to security standards for grizzly bears and road density.
- 01:31:54 Sen. Keane asked about the objection process. Mr. Flowers said the USFS has changed their process for commenting on and further discussion related to travel plans and any other land management proposals. He said they added an objection process to avoid the formalities of an appeal and to encourage collaborative efforts.
- 01:33:43 Sen. Keane asked how the new procedure works toward a collaborative agreement over the old process. Mr. Flowers said when they filed the objection they made it clear that the intent was to continue discussions in a collaborative way to find a solution.
- 01:36:10 Rep. Bennett said the Grizzly Bear Recovery Plan does not allow people in Lincoln County to continue their lifestyle, economies, and feeling of well being as stated in the plan.
- 01:38:03 Sen. Brenden said that 13,000 plant and animal species have been put on the Federal Endangered Species List, but only seven to 20 species have ever been recovered.
- 01:38:35 Sen. Fielder said she has been involved in the USFS objection process and that problems lie in the road density standards based on outdated science and limited information, [Exhibit 7](#).
- 01:41:55 Rep. Lieser asked John Hagengruber, Montana Capital City Coordinator, USFS, to explain how the objection process works and how it is supposed to improve the collaborative process. Mr. Hagengruber said the reason the USFS decided to go from the appeal process to the objection process was to be able to have information go to the deciding official before a document is signed.
- 01:43:05 Sen. Brenden said people are tired of road closures by the USFS which keeps the public off of public land. Mr. Hagengruber said the new objection process is intended to be more collaborative.
- 01:46:15 Sen. Ripley asked for a copy of the objection filed by FWP in the Stonewall Mountain area. Rep. White said he sent a copy of the FWP objection to Mr. Kolman, [Exhibit 8](#). He said he also participated in the objection hearing for the Kootenai and Idaho Panhandle Forest Plan and that he met the objection officer that will make the decision in the case.

- 01:47:53 Sen. Keane said he hopes the new objection process will result in a better outcome and asked Mr. Hagener to let the Council know the outcomes and if it is a better process. Mr. Hagener said that he will.
- 01:49:39 Mr. Hagengruber said he will find out the time-line for the objection process on the Blackfoot Travel Plan.
- 01:49:51 Sen. Keane said that everyone is looking for a better process and hopes the new objection process is the answer. Mr. Hagengruber said the process is intended to achieve a better result.
- 01:50:24 Sen. Keane asked if the meeting that was planned in May for the biologists to tour Mt. Haggin has happened. Ken McDonald, Administrator, Wildlife Division, FWP, said the meeting is scheduled for next Wednesday.
- 01:51:00 Sen. Fielder asked Mr. Hagener for his feedback on the objection that was filed on the Kootenai National Forest. Mr. Hagener said that he had not looked at the objection, but will have the biologists look at it.
- 01:53:35 Sen. Hamlett asked about the grizzly bear problem in Pondera County. Mr. Hagener said that he is not aware of any new issues since they worked with the Hutterite Colony and put up fencing.
- 01:54:12 Sen. Hamlett asked if FWP is tasked with capturing problems bears for the USFWS. Mr. Hagener said USDA Wildlife Services deals with depredation issues and although FWP cooperates, USDA Wildlife Services does most of the trapping.
- 01:54:49 Sen. Hamlett asked if USDA Wildlife Services can tell FWP where to release problem bears. Mr. Hagener said it is largely between FWP and the grizzly bear coordinator with the USFWS in Missoula.
- 01:55:27 Sen. Hamlett asked if there are grizzly bears in the Charles M. Russell National Wildlife Refuge (CMR NWF). Mr. Hagener said there are not.
- 01:56:00 Sen. Hamlett asked if grizzly bears make it to the CMR NWF on their own if that will become another management area for the USFWS. Mr. Hagener said that he did not know.
- 01:56:24 Sen. Hamlett asked if USFWS can ask FWP to take bears to the CMR NWF. Mr. Hagener said it would require approval from FWP's Fish and Wildlife Commission.
- 01:56:45 Sen. Hamlett said the grizzly bear population has recovered, but since it takes a long time to get them de-listed there is a high population of bears going out on the plains and wondered if that is a plan so that the bears get to the CMR NWF on their own.
- 01:58:17 Recess
- 02:16:15 Reconvene



## **SAGE GROUSE MANAGEMENT UPDATE**

- 02:16:43 Tim Baker, Natural Resource Policy Advisor, Governor's Office, gave an update on the greater sage-grouse management plan.
- 02:18:53 Mr. Hagener said FWP is going to recommend closing the upcoming sage-grouse season. Sen. Brenden agreed that the season should be closed in order to increase the number of sage-grouse.

**Public comment** None

### **Committee questions and discussion**

- 02:21:03 Sen. Ripley asked about funding for the sage-grouse management program. Mr. Baker said they do not have enough program details yet in order to work through the funding process.
- 02:21:57 Sen. Brenden asked Mr. Baker to keep the EQC advised as soon as the governor decides on a management plan.

## **BISON MANAGEMENT UPDATE**

- 02:23:09 Mr. Hagener gave an update on the statewide planning process for managing bison.
- 02:28:40 Rep. Bennett left the meeting.
- 02:30:06 Mr. Flowers gave an update on the management of bison outside of Yellowstone National Park.
- 02:33:31 Christian Mackay, Executive Officer, MDOL, said they are still seeing a steady migration of bison back into the park on the west side and talked about the environmental assessment that the MDOL will discuss at its meeting next week.

**Public comment**

- 02:35:19 Maggie Nutter, Rancher, Sweet Grass Hills; President, Marias River Livestock Association, [Exhibit 9](#).
- 02:44:15 Sen. Brenden said there needs to be a balance in the management of bison.
- 02:44:48 Ms. Nutter asked if there is a plan for the state to become involved with the federal government. Sen. Brenden said that the state should be involved.

**Public comment continued**

- 02:46:28 Mr. Gevock
- 02:48:06 Shelby DeMars, United Property Owners of Montana

## Committee questions and discussion

- 02:49:17 Sen. Ripley asked if FWP is working on a long term solution to the overpopulation problem of bison in Yellowstone National Park. Mr. Hagener said the agency is only looking at moving bison that have been through the quarantine period and said FWP is working with the park on an acceptable number of bison.
- 02:52:02 Sen. Ripley asked if there have been any specific talks on how to achieve the population goal for bison. Mr. Hagener said that he has not been directly involved in those talks and referred the question to Mr. Mackay.
- 02:52:47 Sen. Ripley asked if FWP has ownership of the bison on the Green Ranch. Mr. Hagener explained the agreement between the state and Turner Enterprises and estimated that this year there are between 135 and 145 bison that are public trust and owned by the state.
- 02:53:34 Sen. Ripley asked if the bison are sold or re-located to a tribe will there be a Memorandum of Understanding (MOU) outlining specific requirements in law that the tribe will be required to meet. Mr. Hagener said there will be an MOU similar to MOUs in place with Fort Belnap and Fort Peck on the original bison.
- 02:55:58 Sen. Brenden asked if an individual can request some of the bison. Mr. Hagener said no individuals have made a request for the bison and added that it would need to be determined if the bison were livestock or wildlife.
- 02:57:19 Sen. Hamlett asked if FWP can sell the bison that have been quarantined. Mr. Hagener said he was not sure if FWP can sell them because they are a public trust asset.
- 02:57:59 Sen. Hamlett asked if FWP can recover any money it has spent on managing bison if FWP can't sell them. Mr. Hagener said FWP cannot recover any money.
- 02:58:25 Sen. Brenden asked if the state is allowed to sell public trust lands why animals can't be sold since they are also public trust. Mr. Hagener said when public school trust land is sold the money goes into the land banking pool which is used to purchase other land replacing the land that was sold.
- 02:59:23 Rep. White asked if FWP has any range analysis personnel. Mr. Hagener said FWP has one person with that designation and other people that have range background.
- 03:00:06 Rep. White requested that FWP do a range analysis on the north end of Yellowstone National Park where the bison came out north of Gardiner, Montana, to assess the condition of the range and what damage was caused by the bison. Mr. Hagener said FWP can do a broad based analysis, but does not have the authority to go onto private land.

- 03:01:46 Sen. Brenden asked Mr. Hagener to do as much of an analysis as FWP can and report back to the EQC.
- 03:02:03 Rep. White said the bison are causing a problem for the landowners and said he would like an analysis done to determine what damage is being done to the native grasses.
- 03:02:53 Mr. Hagener said that a tour, scheduled by former members of the Natural Resource Conservation Program (NRCS), is scheduled for May 28 and FWP staff will be in attendance. Sen. Brenden encouraged members of the EQC to attend.
- 03:03:57 Mr. Aspenlieder commented on the introduction of bison to areas outside of Yellowstone National Park and the ramifications to public access on private lands.
- 03:05:54 Sen. Ripley asked when bison that have been quarantined are considered domestic livestock. Mr. Hagener said a recent court case ruled that bison being placed in captivity for management purposes does not remove their status as wild bison.
- 03:07:46 Sen. Ripley asked if bison were transferred to an owner would they be considered domesticated. Mr. Hagener said that was his understanding.
- 03:08:09 Sen. Fielder said she has a copy of the notice for the tour of the Gardiner Basin on May 28.
- 03:09:18 Sen. Brenden said that FWP needs to allow public comment at its meetings.

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

None

**OTHER BUSINESS**

- 03:10:21 **Motion:** Rep. McChesney made a motion to send a letter encouraging the Interagency Grizzly Bear Committee (IGBC), and all appropriate state and federal agencies, to update the grizzly bear recovery plan and other related resource management plans so that they are based upon the best available science, [Exhibit 10](#).

**Discussion:**

- 03:13:45 Rep. Lieser  
03:14:18 Mr. Hagener  
03:15:32 Sen. Fielder  
03:16:46 Rep. McChesney  
03:17:05 Sen. Brenden

- 03:17:29 **Vote:** The motion carried unanimously by voice vote of those present and voting.

- 03:17:48 Rep. White made a motion to send a letter in opposition to the new definition of waters, by the Environmental Protection Agency (EPA), to remove the word navigable.
- 03:18:55 Sen. Brenden said the topic was not on the agenda for this meeting, but that the topic can be put on the agenda for the July EQC meeting.
- 03:19:48 Mr. Kolman said that he sent the Council members a copy of the EPA notice for public comment on the definition of waters.
- 03:20:04 Sen. Keane said the EQC needs to be cautious on what it comments on.
- 03:21:07 Sen. Brenden commented on the discussion with the EPA at the January EQC meeting on the Clean Water Act.
- 03:21:27 Mr. Kolman said that the next EQC meeting is scheduled for July 9-10.
- 03:21:51 Sen. Hamlett asked about the length of the July meeting. Sen. Brenden said staff will get the agenda out as soon as possible.
- 03:22:13 Rep. McChesney said that the EQC needs to discuss the possibility of adding an interim committee on public land management.
- 03:22:53 Sen. Brenden adjourned the meeting at 11:41 a.m.

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