



# ENVIRONMENTAL QUALITY COUNCIL

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**DESIGNATED REPRESENTATIVE**  
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JERRY BENNETT  
VIRGINIA COURT  
ED LIESER  
JEFFREY WELBORN  
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

September 11, 2013

Room 172, 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

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

### **STAFF PRESENT**

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

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

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

### **COMMITTEE ACTION**

- The EQC approved the minutes from June 19-20, 2013.
- The EQC adopted the interim work plan.

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

00:00:50 Sen. Brenden called the meeting to order at 8:05 a.m. The secretary called the role, [Attachment 3](#).

### **AGENDA**

#### **ADMINISTRATIVE MATTERS**

##### **Adoption of EQC minutes**

00:01:55 Sen. Ripley moved to accept the June 19 and 20, 2013 minutes. The motion carried unanimously by voice vote.

##### **EQC budget overview**

00:02:16 Joe Kolman, Legislative Environmental Analyst, Legislative Services Division (LSD), gave an overview of the EQC budget.

#### **FINALIZATION OF INTERIM WORK PLAN**

00:02:42 Mr. Kolman said that the work plan reflects the decisions that were made during the June EQC meeting.

00:02:59 Sen. Keane entered the meeting.

00:03:30 Sen. Brenden asked for public comment on the work plan. There was no public comment.

00:04:05 Sen Vuckovich moved to adopt the interim work plan. The motion carried unanimously by voice vote.

### **STATE WATER PLAN UPDATE**

00:04:30 Tim Davis, Administrator, Water Resources Division, Department of Natural Resources and Conservation, (DNRC), provided a list of the Basin Advisory Council members, [Exhibit 1](#). He said he will give a report on the advisory council meetings to the WPIC in January.

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

00:06:59 Rep. Lieser asked if anyone from the U.S. Forest Service (USFS) was represented on the council. Mr. Davis said that they were not represented.

**Public comment** None

### **STATUTORY ADMINISTRATIVE RULE REVIEW**

00:07:59 Helen Thigpen, Staff Attorney, (LSD), gave a report on the rule review memo she sent to the EQC, [Exhibit 2](#), and discussed the rules proposed by the DNRC regarding exempt wells and the definition of combined appropriation.

00:10:52 Sen. Brenden asked for the EQC to be given a copy of the fee increases, proposed by the Department of Environmental Quality (DEQ), for reviewing subdivision applications.

00:11:09 Ms. Thigpen continued the discussion on combined appropriations and provided the EQC with a copy of the letter, [Exhibit 3](#), that was drafted to the DNRC, by the Water Policy Interim Committee (WPIC), asking the EQC to object to the rule notice.

00:16:53 Tim Davis, Administrator, Water Resources Division, DNRC, discussed the combined appropriation time line, [Exhibit 4](#), the proposed rule, [Exhibit 5](#), and the frequently asked questions, [Exhibit 6](#).

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

00:32:58 Sen. Keane asked if the EQC could ask the Attorney General to stop the rule notice since the DNRC is not implementing legislation that was passed during the last session. Ms. Thigpen said the Council does not have that authority under the Montana Administrative Procedure Act (MAPA).

00:34:13 Sen. Keane asked if someone in leadership could question the rulemaking authority. Ms. Thigpen said that she did not think so, but will look into the possibility.

- 00:34:43 Sen. Ripley asked if the EQC could wait and object to the rule after receiving public comment. Ms. Thigpen said that under the provisions of MAPA an agency can take action within 30 days after noticing the rule and the hearing is scheduled for September 19.
- 00:35:38 Sen. Ripley asked what DNRC's intention is on adopting the rules. Mr. Davis said that under the stipulation they had to adopt the rule as close to October 1 as possible, but no later than December 31.
- 00:36:18 Sen. Ripley asked when the next EQC meeting was scheduled. Mr. Kolman said that the meeting was scheduled for January 8 and 9, 2014.
- 00:36:47 Rep. White asked if the rule was to be litigated, the frequently asked questions could be used as intent to further define the rule. Ms. Thigpen said that if the rule is challenged, the court will only look at the plain language of the rule.
- 00:38:07 Rep. White asked how the DNRC determined 1,320 feet as the distance under subsection (13)(b). Mr. Davis said the DNRC was trying to create a consistent standard.
- 00:39:36 Rep. Bennett asked for clarification of a same source aquifer. Mr. Davis explained how a same source aquifer will be applied under the rule.
- 00:40:52 Rep. Bennett asked how it can be verified that aquifers are not connected. Mr. Davis said that an applicant would need a hydrogeologic assessment.
- 00:41:52 Sen. Brenden asked if several wells drilled on a single parcel of land would need to go through the permitting process. Mr. Davis said that it would depend on how the land was parceled.
- 00:43:16 Sen. Brenden asked how the rule applies when drilling wells on subdivided lots. Mr. Davis said that each parcel could have a combined appropriation of up to 10 acre feet.
- 00:44:28 Sen. Brenden asked how the rule will affect the subdivision process. Mr. Davis said that there will be a rapid pre-approval process that will make it easier for people to know if they can stay under the exemption.
- 00:45:48 Rep. Court asked if changes can be made to the rule after the public hearing. Mr. Davis said they do anticipate making changes after the public hearing.
- 00:46:50 Rep. Court asked what would happen if changes were made to the rule. Mr. Davis said that if significant changes are made the DNRC may need to re-notice the proposed rule.
- 00:47:51 Rep. Court asked what legislation is being implemented under the rule. Ms. Thigpen said that it is legislation from 1987.

- 00:48:46 Sen. Keane asked who had requested the rules for recreational use on lakes. Ms. Thigpen said that the rules have been proposed by the Department of Fish, Wildlife and Parks (FWP).
- 00:49:51 Ms. Fitzpatrick asked what will happen if the EQC objects to the rule. Ms. Thigpen said that the first objection would delay the rule for six months.
- 00:52:17 Rep. Bennett asked about SB 346 (2013) which defined stream depletion zones. Mr. Davis said that stream depletion zones will only be allowed in closed basins.
- 00:52:52 Rep. Bennett asked if the bill would set a precedent for defining the rule in open basins and closed basins. Mr. Davis said that SB 346 modified the definition of combined appropriation so that only volume applies.
- 00:54:23 Rep. White asked how the rule will be enforced. Mr. Davis said that the enforcement process is complaint driven.
- 00:59:00 Sen. Brenden asked if the complainant has to give their name. Mr. Davis said they do have to give their name.
- 00:59:43 Rep. McChesney said that Montana water law is based on the prior appropriation doctrine and the ultimate responsibility of the legislature is to protect senior water rights.
- 01:03:33 Sen. Brenden said that the rule should not be applied as "one size fits all".

#### **Public comment**

- 01:04:06 John Youngberg, representing the Montana Farm Bureau, said that water rights need to be protected for the future of agriculture and there needs to be a balance with the right to develop property with exempt wells.
- 01:08:51 Mike Murphy, representing the Montana Water Resources Association, said that they are in favor of allowing the rule process to move forward.
- 01:12:35 Krista Lee Evans, representing the Association of Gallatin Agricultural Irrigators, said that they also support allowing the rulemaking process to move forward.
- 01:16:18 Harold Blattie, Executive Director, Montana Association of Counties, said that they are working on comments and objections to a number of provisions in the draft rules.
- 01:17:08 Abigail St. Lawrence, representing the Montana Association of Realtors, discussed water rights, the rulemaking process and reviewed recommendations from the work of the last interim.
- 01:23:03 Dustin Stewart, representing the Montana Building Industry Association, said that he was against a "one size fits all" policy and asked the EQC to intervene in the rulemaking process.

### **Committee discussion**

- 01:27:50 Sen. Brenden said that the EQC will take action on the rule during the meeting tomorrow.
- 01:30:07 Rep. McChesney said that he would like to hear public comment before taking action.
- 01:31:10 Sen. Brenden asked what will happen if the EQC doesn't take action to stop the rulemaking process. Mr. Kolman said that if there is no objection to the rule the DNRC can proceed and adopt the rule under the Montana Administrative Procedures Act (MAPA). He said that an objection will delay the rulemaking process for six months.
- 01:32:26 Sen. Hamlett asked if the EQC will have time to discuss the objection before making a final decision. Sen. Brenden said that the EQC will be able to discuss whether or not to object to the rule during the meeting tomorrow.

### **WATER POLICY INTERIM COMMITTEE UPDATE**

- 01:32:59 Jason Mohr, Research Analyst, LSD, gave an update of the September 9 and 10, 2013 WPIC meeting.
- 01:35:59 Leanne Kurtz, Legislative Analyst, LSD, gave a preview of the tour of Reeder's Alley.
- 01:38:22 BREAK

### **SJR 4 STUDY: TOUR OF REEDER'S ALLEY, DOWNTOWN HELENA (Not recorded)**

- 05:00:06 Sen. Brenden called the meeting back to order.

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

- 05:00:46 Allen Schallenberger, Sheridan, Montana, talked about comments he submitted to FWP on the grizzly bear management plan for southwestern Montana, [Exhibit 7](#).
- 05:07:55 Rep. Wellborn asked if any of the encounters between humans and grizzly bears have been with bears that were ear tagged and transferred out of Yellowstone National Park. Mr. Schallenberger said that recent encounters did not involve bears that had been tagged.
- 05:09:43 Sen. Ripley asked Mr. Schallenberger to share with the Council any response he receives from FWP.

## **SJ 15 - STUDY OF FEDERAL LAND MANAGEMENT**

- 05:10:56 Mr. Kolman gave an overview of the SJ 15 study.
- 05:19:31 Martin Nie, Ph.D., Naural Resource Policy Specialist, College of Forestry and Conservation, University of Montana, gave a history and policy overview pertaining to the relationship of federal and state governments in the management of federal lands and resources, [Exhibit 8](#).
- 05:29:30 Jay O'Laughlin, Ph.D., Policy Analysis Group Director, College of Natural Resources, University of Idaho, gave a summary of the report that was done on the analysis of federal lands and alternative governance policies, [Exhibit 9](#).
- 05:51:53 Tom Schmidt, Deputy Regional Forester, USFS, Northern Region, discussed the responsibility and purpose of the USFS and the issues they are currently facing, [Exhibit 10](#).
- 06:09:56 Theresa Hanley, Deputy State Director, Bureau of Land Management (BLM), Montana State Office, discussed the mission of the BLM, and their resource management plan and goals. She provided copies of a power point presentation, [Exhibit 11](#), and a Montana/Dakotas BLM brochure, [Exhibit 12](#).
- 06:26:09 Doug Mote, Mote Lumber, provided his perspective on private land management.

### **Public comment**

- 06:33:11 Nick Gevoc, representing the Montana Wildlife Federation, provided data on the contributions that wildlife on public land makes to the state's economy. He provided handouts from the Institute for Tourism and Recreation Research, [Exhibit 13](#), Congressional Sportsmen's Foundation, [Exhibit 14](#), and the U.S. Fish and Wildlife Service, [Exhibit 15](#).
- 06:36:54 Gail Abercrombie, representing the Montana Petroleum Association, discussed problems associated with federal regulations on public lands. [Exhibit 16](#).
- 06:43:13 Dan Happel, County Commissioner, Madison County, said that he supports the SJ 15 study.

### **Committee questions and discussion**

- 06:45:40 Sen. Fielder asked what percentage of the USFS budget is allocated to resource management versus fighting fire and lawsuits. Mr. Schmidt said that about 50% of their budget goes to fighting fire.
- 06:47:05 Sen. Fielder asked if the USFS is looking at any options to help with the increasing cost to fight fires while their funding decreases. Mr. Schmidt said they are looking at partnering with other agencies to treat lands and reduce risk from fires.

06:49:11 Sen. Fielder asked for clarification on the percentage of decline in funding for the USFS. Mr. Schmidt said that the decline in funding was 19% in 2011-12.

06:49:45 Sen. Fielder asked if the USFS is projecting another drop in funding. Mr. Schmidt said that funding dropped 5% this year and they anticipate funding to drop 8% per year indefinitely.

06:50:04 Sen. Fielder asked if the USFS can work with the legislature to help with funding. Mr. Schmidt said that they can have conversations initiated by the legislature.

06:50:54 Sen. Fielder asked who would be the point of contact at the USFS for the land study. Mr. Schmidt said to contact John Hagenruber.

06:51:09 Sen. Fielder asked if any federal lands have been put up as collateral against the federal debt. Mr. Schmidt said that no federal lands have been put up as collateral.

06:51:39 Sen. Fielder asked if a lot of litigation is settled out of court. Mr. Schmidt said that a number of cases are settled out of court and that they update their environmental documents to meet the standards that are set by court decisions.

06:52:06 Sen. Fielder asked if settlements are public information. Mr. Schmidt said that he was unsure if they are public record.

06:52:36 Rep. White asked if the \$52 million that the USFS spent fighting fires was just in Montana. Mr. Schmidt said that it was only in Montana.

06:54:15 Rep. White asked how much money is spent on litigation in Montana. Mr. Schmidt said that he is not sure and will have to get the information. Rep. White also asked when the USFS last made money. Mr. Schmidt said that it was sometime in the early 1990s.

06:55:08 Sen. Ripley asked if any of the litigants in federal lawsuits are partners with the USFS. Mr. Schmidt said that none of the litigants are partners.

06:56:14 Sen. Ripley asked for a copy of the USFS policy to improve watersheds and asked how to rectify conflict in the policy between improving watersheds and letting fires burn. Mr. Schmidt said he will provide a copy of the policy and discussed the role of fire in forest lands and how fighting fires has changed the way that forest fires burn.

06:58:13 Sen. Ripley asked if the policy to improve watersheds included wilderness areas. Mr. Schmidt said that all watersheds will be part of the policy.

06:58:54 Sen. Keane asked about the success of cooperative agreements in Idaho. Mr. O'Laughlin said his report highlights the agreement between the National Park Service and the Idaho Department of Parks and Recreation in managing the City of Rocks area. He also said that they have eight different collaborative projects at the current time and they will be models for future cooperative agreements.



07:00:43 Sen. Keane asked what the difference is between cooperative and collaborative agreements. Mr. O'Laughlin explained the difference.

07:02:54 Sen. Keane asked if there were any collaborative agreements in Montana. Mr. Nie said that there were collaborative agreements in Montana and gave examples of agreements with the USFS.

07:06:17 Sen. Keane asked if the USFS will work with Butte/Silverbow County on a collaborative agreement since their water comes from USFS land. Mr. Schmidt said that they will work with the county.

07:07:54 Sen. Hamlett asked if the "Big Blow-of 1910" were crown fires. Mr. Schmidt said that they were crown fires.

07:08:29 Sen. Hamlett asked if the fires were before the USFS had a fire suppression policy. Mr. Schmidt said that the USFS fire suppression policies came out of that fire.

07:08:46 Sen. Hamlett asked about the USFS approach on watersheds. Mr. Schmidt said that the purpose of the watershed is determined by the forest plan.

07:11:26 Sen. Hamlett asked if the forest health is in more trouble now than it was 50 years ago. Mr. Schmidt said that the forest health is in more trouble today.

07:12:49 Mr. Aspenlieder asked if an economic based analysis in forest management could withstand a legal challenge. Mr. O'Laughlin said he did not know how the courts would rule.

07:18:20 Mr. Aspenlieder said that the economic view should not be overlooked in managing forests.

07:19:36 Rep. Lieser asked Mr. Nie if he was aware of the good neighbor policy. Mr. Nie said he was not familiar with the legislation.

07:20:44 Rep. Lieser asked Mr. O'Laughlin if he was aware of the good neighbor policy. Mr. O'Laughlin said that his understanding of the policy is that it allows state land managers to work on federal lands.

07:21:53 Rep. Lieser asked how the Collaborative Forest Landscape Restoration Program is working and if it will help with litigation. Mr. Schmidt said that it is helping the USFS to make better decisions.

07:24:26 Rep. Lieser asked if the National Cohesive Wildland Fire Management Strategy has been implemented by the USFS. Mr. Schmidt said that the cohesive strategy is still being fully developed, but that it helps to prioritize how federal agencies, state agencies, and private landowners work together to lessen the danger from fires.

- 07:26:08 Rep. Lieser asked if revisions to the forest plan are causing delays for projects in Region 1. Mr. Schmidt said since they have received additional money to work on forest plans it is not taking away from their projects.
- 07:27:08 Rep. Court asked if the counties in Idaho work well with the USFS and the BLM. Mr. O'Laughlin said that indications suggest that the counties are not satisfied and would like to test different alternate governance mechanisms such as the Trust Land Management Model.
- 07:28:24 Sen. Hamlett asked about the trend in Idaho and other states in passing legislation dealing with the wildland urban interface and watersheds. Mr. O'Laughlin said the Idaho legislature did pass a study bill, but the report is not due until January 2015.
- 07:32:20 Sen. Hamlett asked about working with the federal government under the good neighbor policy. Mr. O'Laughlin said that it is better to work as a collaborative effort.
- 07:33:42 Rep. White asked Mr. O'Laughlin if he would provide a copy of the testimony he gave to the Idaho Senate Energy and Natural Resources committee in March 2013. Mr. O'Laughlin said that it is available on the University of Idaho website and he will also give the information to Mr. Kolman.
- 07:36:04 Sen. Brenden asked Ms. Hanley to provide the Council with trends for Animal Unit Months (AUM), from the high point, to see if it is on the decline.
- 07:37:24 Sen. Brenden asked about the USFS management for Region 1 and asked Mr. Schmidt to provide information on the average length of service and tenure for employees in management positions.

#### **INTRODUCTION OF TEN MILE PROJECT AND TOUR PREVIEW**

- 07:43:38 Ron Alles, Helena City Manager, gave an overview of the Ten Mile watershed and treatment plant.
- 07:49:07 Bill Avey, Supervisor, Lewis and Clark National Forest and Acting Forest Supervisor, Helena National Forest, gave an overview of the Chessman Red Mountain Flume project, [Exhibit 17](#).
- 07:53:11 Sen. Brenden adjourned the meeting at 4:00 p.m.

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