



ENVIRONMENTAL QUALITY COUNCIL

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

MINUTES LOG

March 9, 2016
Room 172, Capitol Building
Helena, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The 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 Log, along with the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the Exhibits is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed.

Please contact the Legislative Services Division at 406-444-3064 for more information.

COMMITTEE MEMBERS PRESENT

SEN. GENE VUCKOVICH, Chair
REP. JERRY BENNETT, Vice Chair

SEN. JIM KEANE
SEN. MIKE PHILLIPS
SEN. RICK RIPLEY
SEN. CARY SMITH

REP. WILLIS CURDY
REP. JANET ELLIS
REP. ED LIESER
REP. THERESA MANZELLA
REP. KERRY WHITE

MR. SCOTT ASPENLIEDER
MS. BROOKE ERB
MR. BERT LINDLER
MR. ROY MORRIS
MR. TIM BAKER

COMMITTEE MEMBERS EXCUSED

SEN. JOHN BRENDEN

STAFF PRESENT

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

AGENDA (Attachment 1)

VISITORS' LIST (Attachment 2)

CALL TO ORDER AND ROLL CALL

00:00:00 Sen. Vuckovich called the meeting to order at 10:02 a.m. The secretary called the roll. (Attachment 3) Sen. Brenden was excused and gave his proxy to Sen. Ripley. (Attachment 4)

ADMINISTRATIVE MATTERS

00:00:51 Joe Kolman, legislative environmental analyst, Legislative Services Division, said the EQC has approximately \$58,000 left in its budget.

WATER POLICY INTERIM COMMITTEE UPDATE

00:01:21 Jason Mohr, research analyst, Legislative Services Division, gave an update on the Water Policy Interim Committee (WPIC) meeting on March 7 and 8. He said the committee continued its study of possible state assumption of Federal Section 404 Permitting, water availability and supply, and the future of the Water Court.

00:01:58 Mr. Mohr discussed state assumption of Section 404 permitting.

00:03:41 Mr. Mohr discussed the study of the future of the Water Court.

00:04:41 Mr. Mohr said Tom Livers, director, Department of Environmental Quality (DEQ), gave an update on a leak that occurred in a storage pond, at the Yellowstone Club, that spilled into the Gallatin River on March 3.

00:05:40 Mr. Mohr said the WPIC's next meeting will be in Bozeman on May 2 and 3.

ADMINISTRATIVE MATTERS CONTINUED

Approval of Minutes

00:06:04 Sen. Vuckovich asked if there were any additions or corrections to the January minutes.

- 00:06:25 Mr. Kolman said Sen. Brenden called and asked about an addition to the January minutes regarding a comment he made. Mr. Kolman said he will listen to the audio file and the EQC can take action on the minutes tomorrow.
- 00:06:45 Mr. Kolman said Sen. Brenden provided a handout of statements made by Secretary of State John Kerry. **(Exhibit 1)** He said Sen. Brenden also wanted to make sure that the Department of Natural Resources and Conservation (DNRC) had provided the EQC with an update on attorney fees for the lawsuit involving the Friends of the Wild Swan. Mr. Kolman said the report was included in the EQC mailing.
- 00:07:12 Sen. Ripley commented on the article provided by Sen. Brenden.
- 00:07:45 Rep. Ellis asked if the EQC will wait to approve the minutes. Sen. Vuckovich said it will.

WATER POLICY INTERIM COMMITTEE UPDATE CONTINUED

Public Comment: None

Committee Questions and Discussion:

- 00:08:26 Rep. White asked Mr. Mohr if the leak at the Yellowstone Club was caused by a design or construction flaw and if DEQ will have a public meeting. Mr. Mohr said a public meeting was held over the weekend and that the DEQ will continue to provide updates. He said the leak may have been caused by ice that had built up and sheared off one of the pipes.

ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE UPDATE

- 00:10:25 Sonja Nowakowski, research analyst, Legislative Services Division, said the Energy and Telecommunications Interim Committee (ETIC) will meet on Friday to continue its net metering study and its study of next generation 9-1-1.
- 00:10:50 Ms. Nowakowski discussed HJ 7 (2015) the study of next generation 9-1-1.
- 00:12:32 Ms. Nowakowski discussed SJ 12 (2015) the study of net metering.

Committee Questions and Discussion: None

111 (d) EPA RULEMAKING SUBCOMMITTEE UPDATE

- 00:13:47 Sen. Keane said since the Supreme Court issued a stay order on the Clean Power Plan, the 111(d) subcommittee and the governor's task force are no longer meeting. He said there is no need to send a letter to the Attorney General.

Public Comment: None

Committee Questions and Discussion: None

WASHINGTON & OREGON STATE LEGISLATION REGARDING COAL POWER

- 00:14:28 Ms. Nowakowski said Oregon has ended its 2016 Legislative Session and the Washington Legislature is expected to adjourn tomorrow. She said in Washington SB 6248 passed both the house and the senate and has gone to the governor and in Oregon SB 1547, formerly HB 4036, passed both houses.
- 00:15:00 Ms. Nowakowski provided a summary of SB 6248.

- 00:16:14 Ms. Nowakowski provided a summary of SB 1547.
- 00:18:10 Ms. Nowakowski discussed the amendments to SB 6248 that were requested by the Montana delegation.
- 00:20:39 Sen. Ripley said the Montana delegation was able to get more time for Montana to react to the future of Colstrip. He said there will be important issues moving forward that Montana can deal with during its next legislative session. He thanked the EQC for sending the delegation to Washington.
- 00:22:38 Sen. Keane said he is concerned about the cost of energy to Montana ratepayers, businesses, and agricultural producers. He said disruption costs when power is taken off of transmission lines will be another issue. He thanked the EQC for sending the delegation to Washington.

Public Comment:

- 00:26:53 Tom Ebzery, representing Puget Sound Energy and Portland General Electric
- 00:36:25 Anne Hedges, Montana Environmental Information Center ([Exhibit 2](#))

Committee Questions and Discussion:

- 00:49:58 Sen. Phillips asked Bud Clinch, executive director, Montana Coal Council, to provide his thoughts on the Oregon and Washington legislation and if he thought there was value in a proactive effort by the Montana Legislature on the future of Colstrip.
- 00:51:57 Sen. Phillips said the near term future seems unsettled and asked Mr. Clinch if navigating that future will be a challenge. Mr. Clinch said it will be.
- 00:52:52 Sen. Phillips asked Ms. Nowakowski for a copy of the information that was presented by the Montana delegation in Washington. Ms. Nowakowski said she had some information, but referred the question to Sen. Ripley and Sen. Keane.
- 00:53:44 Sen. Ripley said their entire testimony is available on the Washington Legislature's website.
- 00:54:33 Sen. Phillips said he recommends that the EQC consider working on legislation for the 2017 session so that Montana can be prepared for a future that is less reliant on coal revenue.
- 00:55:35 Sen. Keane said he recommends waiting to see what happens with the Washington legislation before taking action. Sen. Ripley agreed.
- 00:56:44 Sen. Phillips said he is proposing a study bill.
- 00:57:24 Rep. Lieser said that time is of the essence considering the rate at which things are changing and a study would provide some tools and information.
- 00:58:40 Rep. White asked Ms. Nowakowski if she can provide information about the true economic cost of closing Colstrip to the state of Montana. Ms. Nowakowski said she will need some guidelines on the specific information requested.
- 01:04:02 Rep. White suggested forming a subcommittee to look at different ideas for legislation.
- 01:04:40 Rep. Ellis asked if there have been any discussions with legislators from Washington about changes to Talon Energy's portfolio and the impacts to industrial customers in Montana. Sen. Keane said they have had discussions along those lines. He commented on why he does not support a study bill.

- 01:07:53 Sen. Phillips said he recommends that the EQC consider forming a joint subcommittee with the ETIC to work on a study bill.
- 01:09:20 Sen. Vuckovich asked if the EQC wanted to take any action.
- 01:09:30 **Motion:** Sen Phillips moved to form a subcommittee to draft a study bill that the EQC can advance to the 2017 Legislature.

Discussion:

- 01:09:52 Sen. Ripley
- 01:11:21 Sen. Keane
- 01:12:32 Sen. Phillips
- 01:14:04 Sen. Ripley
- 01:14:20 Sen. Phillips
- 01:15:02 Sen. Ripley
- 01:15:25 Sen. Phillips
- 01:16:13 Rep. White
- 01:17:43 Sen. Phillips
- 01:18:19 Sen. Ripley
- 01:18:58 Sen. Vuckovich
- 01:19:20 Sen. Phillips
- 01:20:15 Without objection, Sen. Phillips withdrew his motion.
- 01:20:18 Sen. Vuckovich

ORPHAN SHARE REMEDIAL ACTION AND PETROLEUM TANK RELEASE SITE CLOSURE UPDATE

- 01:20:50 Jenny Chambers, administrator, Remediation Division, Department of Environmental Quality (DEQ), gave an update on the progress of the petroleum tank release site closures and Orphan Share remediation action project. [\(Exhibit 3\)](#)

Public Comment:

- 01:24:13 Terry Wadsworth, executive director, Petroleum Tank Release Compensation Board

Committee Questions and Discussion:

- 01:24:43 Sen. Keane asked about the funds not yet committed to projects. Ms. Chambers said it is approximately \$3.5-3.6 million and that the DEQ hopes to have all of the funds obligated over the summer or early fall with some contingencies built in for additional work to be done over winter or next spring.

STATUTORY ADMINISTRATIVE RULE REVIEW

- 01:26:52 Helen Thigpen, staff attorney, Legislative Services Division, presented the administrative rule review report. [\(Exhibit 4\)](#)

Public Comment: None

Committee Questions and Discussion:

- 01:31:54 Mr. Aspenlieder commented on the rule change proposed by the Department of Fish, Wildlife, and Parks (FWP) regarding aquatic invasive species. He said he is concerned about expanding authority to a state agency without going through the legislative process.
- 01:34:22 Sen. Keane said the invasive species law was implemented through the legislative process and commented on the quarantine issue.
- 01:36:55 Sen. Phillips said the rules are derived from very diligent legislative work.
- 01:37:28 Sen. Ripley asked Becky Dockter, chief legal counsel, FWP, to address some of Mr. Aspenlieder's concerns.
- 01:41:05 Rep. White asked about the boat inspection stations that are staffed by volunteers and not by law enforcement or authorized personnel from FWP. Ms. Dockter said the volunteers do inspections, but any law enforcement is done by FWP.
- 01:42:31 Recess for lunch
- 03:06:52 Reconvene

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

- 03:07:36 Nick Gevock, conservation director, Montana Wildlife Federation

FWP PROGRAM EVALUATION: HABITAT MANAGEMENT

- 03:09:50 Hope Stockwell, research analyst, Legislative Services Division, thanked FWP for its assistance with the Habitat Management report. [\(Exhibit 5\)](#) She said the three primary components of habitat management are administration, operations and maintenance, and providing technical assistance to outside entities for land use.
- 03:11:34 Ms. Stockwell presented a financial overview and discussed three types of funding.
- 03:14:19 Ms. Stockwell discussed habitat administration.
- 03:25:47 Ms. Stockwell discussed operations and maintenance.
- 03:28:59 Ms. Stockwell discussed technical assistance.

Public Comment:

- 03:29:58 Jeff Hagener, director, FWP
- 03:30:15 Mark Lambrecht, director of Government Affairs, Rocky Mountain Elk Foundation
- 03:30:42 Nick Gevock, conservation director, Montana Wildlife Federation
- 03:32:47 Robert Sanders, manager, Montana Conservation Programs, Ducks Unlimited

Committee Questions and Discussion:

- 03:33:45 Mr. Aspenlieder said the 2009 audit identified a 15% allocation of funds for administrative costs and asked what the current allocation is. Ms. Stockwell said the amount cannot exceed 15% a year.
- 03:35:04 Rep. Curdy asked Mr. Hagener about the funds generated by grazing and farming leases. Mr. Hagener said he will find out.

- 03:35:52 Rep. Curdy asked Mr. Hagener about forestry projects south of Missoula and how much money FWP generates from timber sales. Mr. Hagener said he will get the information.
- 03:36:37 Rep. White asked about restrictions on additional land purchases. Ms. Stockwell said in HB 403 (2015), where the money for FY 2016/2017 was appropriated, the funds are restricted from land purchases except in cases where FWP was already negotiating the purchase.
- 03:37:48 Rep. White asked Ms. Stockwell if the 9,488 acres of fee title purchase located in the Sun River, Beartooth, and Blackleaf Wildlife Management Areas was already being negotiated or if it is a new purchase. Ms. Stockwell referred the question to FWP. Mr. Hagener said FWP was already negotiating the purchase.
- 03:39:22 Ms. Erb asked Ms. Stockwell about the terms of sale when a conservation easement is sold to a new owner.
- 03:40:51 Mr. Aspenlieder asked Ms. Stockwell how the 15% limit on administrative costs is determined. Ms. Stockwell said it is 15% of the overall program budget not just the expenditures for that year. She deferred the question to FWP.
- 03:42:09 Ken McDonald, administrator, FWP, said that legislation in 2009 repealed the 15% requirement for administrative costs. He said costs for administration is based on a percent of the budget allocated per year.
- 03:43:51 Sen. Ripley asked Mr. McDonald if the definition of administration varies within the agency's programs. Mr. McDonald said it does.
- 03:44:42 Ms. Stockwell clarified that the program evaluation accurately reported that HB 499 (2009) repealed the 15% limit on administrative costs and that her previous statement was incorrect.
- 03:45:16 Sen. Phillips asked Mr. Hagener if FWP would be able to administer an influx of new land and whether it is content with the amount of land it has or wants to acquire more land. Mr. Hagener said FWP's primary emphasis is on the management of its current wildlife areas and their proper operation and maintenance. Mr. Hagener said there are critical pieces of habitat land that the agency would like to acquire in order to create a buffer zone from development.
- 03:46:58 Sen. Phillips asked Mr. Hagener if that land is held in private ownership. Mr. Hagener said that most of it is and that some of it is trust land held by the DNRC.

GRIZZLY BEAR DELISTING PROPOSAL

- 03:50:00 Mr. Hagener said the grizzly bear delisting proposal is a U.S. Fish and Wildlife Service (USFWS) rule and involves an amendment to the existing recovery plan, a conservation strategy, and the actual rule. He said the draft proposal for the conservation strategy and draft recovery plan are currently out for a 60 day comment period.

Committee Questions and Discussion:

- 03:54:00 Rep. Ellis asked Mr. Hagener about the Endangered Species Act (ESA) delisting process and if each state will have to come up with its own plan. Mr. Hagener said the Memorandum of Understanding (MOU) will be a joint issue between all the states, but each state will have its own parameters.
- 03:55:41 Rep. Curdy asked Mr. Hagener about the fiscal impact to Montana if the grizzly bear is delisted.

- 03:56:54 Sen. Phillips referred to the Greater Yellowstone ecosystem grizzly bear population map (**Exhibit 6**) and asked Mr. Hagener if there was ever a distinct population listed for grizzly bears in the federal code of regulations.
- 03:58:17 Sen. Phillips asked Mr. Hagener if grizzly bear are listed range wide as an endangered species. Mr. Hagener said they are.
- 03:58:25 Sen. Phillips said a U.S. district judge reinstated federal protections for gray wolves in the Great Lakes region saying the removal was arbitrary and violated the ESA. He asked Mr. Hagener how the courts might interpret piecemeal delisting of the grizzly bear. Mr. Hagener said the USFWS has appealed that decision.
- 03:59:29 Sen. Phillips said the court has determined if a species is listed as endangered across the U.S. then that is the only way it can be delisted. He said that although the ruling has been appealed, delisting the grizzly bear may not go as smoothly as the USFWS might like.
- 04:01:55 Matt Hogan, deputy regional director, USFWS, via phone, said the USFWS has proposed a rule to delist the Greater Yellowstone ecosystem population of grizzly bears. He said it should be published in the federal register on March 11, followed by a 60-day public comment period.
- 04:02:58 Mr. Hogan discussed how the ESA works.
- 04:05:51 Mr. Hogan discussed the conservation strategy for grizzly bear.
- 04:06:35 Mr. Hogan discussed the recovery criteria for grizzly bear.
- 04:08:53 Mr. Hogan said there are public comment meetings scheduled in Cody, Wyoming and Bozeman on April 11 and 12.

Public Comment:

- 04:09:24 Mr. Gevock, MWF

Committee Questions and Discussion:

- 04:12:18 Sen. Phillips asked Mr. Hogan about the failure of the piecemeal approach used to remove the gray wolf population from the ESA in the Great Lakes region and how the USFWS expects a different outcome with grizzly bears. Mr. Hogan said the USFWS is appealing the decision and believes it has the ability to designate a distinct population segment (DPS) and delist it at the same time.
- 04:14:38 Sen. Phillips said a two-step process of listing the Greater Yellowstone grizzly bear as a DPS, and then delisting it, would take more time, but would be a cleaner process than doing it in one step. Mr. Hogan agreed and explained why the USFWS is doing it in one step.
- 04:15:44 Rep. Lieser asked Mr. Hogan to provide examples on how the conservation strategy changed with delisting.
- 04:18:41 Rep. White asked about grizzly bears in the Twin Bridges area and the delisted zone for hunting. Mr. Hogan said the mortality limits will be in the demographic monitoring area (DMA). He said outside the DMA the state will have flexibility managing the bear. Mr. Hagener said Twin Bridges is outside the DMA.

- 04:21:58 Rep. White said if the bear is delisted, hunting will be allowed in the area of the map marked as suitable grizzly bear habitat, except for Yellowstone National Park, and that the number of bears will be monitored to a targeted amount set at the time of delisting. Mr. Hagener said the plan in the conservation strategy is a sliding scale that targets an average population size of bears.
- 04:24:02 Rep. White asked if there is a trigger in place if the bears get to a certain number then they will be relisted. Mr. Hogan said there is not a specific number, but there are several places in the rule that can call for a review.
- 04:26:51 Mr. Lindler asked Mr. Hagener if the Yellowstone grizzly bear is delisted, and Montana establishes a hunting season, what measures will ensure that the bears in the Northern Continental Divide can establish biologically effective genetic connectivity with the bears in Yellowstone. Mr. Hagener said studies have shown that the population in Yellowstone has been proven to be genetically viable and there is not a concern that there is introgression.
- 04:29:26 Sen. Vuckovich asked if the EQC wanted to take any action.
- 04:29:30 **Motion:** Rep. White moved to have the EQC send a letter to support delisting the Greater Yellowstone grizzly bear.

Discussion:

- 04:29:41 Sen. Phillips said he recommends waiting until after the proposed rule is published in the federal register. Sen. Vuckovich agreed.
- 04:30:14 Without objection, Rep. White withdrew his motion.

EQC ENVIRONMENTAL INDICATORS UPDATE

- 04:30:40 Mr. Mohr, presented an update on environmental indicators and said the EQC received a memo outlining some of the history. **(Exhibit 7)** He said part of the EQC's duties is to gather timely and authoritative information concerning the conditions and trends on the quality of the environment.
- 04:31:38 Mr. Mohr said staff will develop an online repository of the indicators and said the EQC was given a copy of a screen shot of the environmental indicators home page and examples of charts of individual indicators. **(Exhibit 8)**

Public Comment: None

Committee Questions and Discussion:

- 04:34:28 Mr. Aspenlieder asked Mr. Mohr why the data is not current. Mr. Mohr said it is dependant on information available at the time.
- 04:36:00 Mr. Aspenlieder said the relevancy of the data is almost out-of-date by the time it is produced. Sen. Vuckovich asked Mr. Aspenlieder if he had a suggestion on how to address the issue. Mr. Aspenlieder said he did not think the data was useful to the private sector.
- 04:37:32 Sen. Phillips said the data does provide trend lines giving a better prediction of the future.

04:38:16 Rep. Ellis asked Mr. Mohr if he wanted ideas from the EQC on how to expand the environmental indicators. Mr. Mohr said staff will work on it internally, but the information is for the members of the EQC and they can make suggestions.

AGENCY LITIGATION REPORTS

04:39:15 Mr. Kolman said the EQC received a list of litigation that the agencies it has oversight over are involved in or have recently been involved in. [\(Exhibit 9\)](#)

04:40:25 Mr. Kolman said the EQC received information on attorney fees and settlements over the last decade for the DNRC and the DEQ. He provided a copy of the information from FWP that was not included in the mailing. [\(Exhibit 10\)](#)

Public Comment: None

Committee Questions and Discussion:

04:41:35 Rep. White asked Mr. Kolman about litigation trends. Mr. Kolman said he will check with the agencies on tracking the information.

04:42:45 Sen. Keane commented on *Silver Bow Creek Headwaters Coalition v. State* and said the community is thankful for the judge's decision to change the name of the channel from "Metro Storm Drain" to "Silver Bow Creek."

04:43:28 Recess

04:59:17 Reconvene

HJ13 STUDY

04:59:44 Mr. Kolman gave an overview of the draft report on the HJ 13 study. [\(Exhibit 11\)](#)

Public Comment: None

Committee Questions and Discussion:

05:02:00 Rep. Bennett commented on the draft report and thanked Rep. White and the EQC staff for their effort.

05:02:49 Rep. White thanked staff for putting the report together.

05:03:25 Rep. White discussed findings he drafted that could be inserted as bullet points into the report. [\(Exhibit 12\)](#)

05:04:23 Rep. White discussed finding 1 - the U.S. Forest Service (USFS) has closed 21,951 miles of roads to public use in the last 15 years.

05:05:25 Rep. Curdy

05:06:11 Rep. White

05:06:20 Rep. Curdy

05:06:35 Rep. Ellis said she would like to have more time to look at the information before making a decision on findings.

05:08:00 Rep. White said when he put together the findings he pulled out facts from the executive summary and the report. He said he would like to put the report out for public comment and not take any formal action today.

05:09:08 Mr. Kolman discussed the public comment period and said the findings and recommendations are generally put in before the draft report goes out for public comment.

05:11:28 Sen. Vuckovich commented on finding 1.

05:12:41 Sen. Phillips said he would also like some time to study the report before discussing the summary of facts.

05:13:02 Rep. White said the findings are what he has pulled out of the report and thinks are important for the public to see.

05:14:55 Rep. Bennett said any member of the EQC can make suggestions for the key findings and recommendations.

05:15:57 Mr. Lindler asked about HB 352 (2015). Rep. White asked to take the findings in order. Sen. Vuckovich agreed.

05:16:23 Rep. White commented on finding 1.

05:17:12 Rep. White discussed finding 2 - approximately 1,623 square miles of public lands are inaccessible in elk distribution areas.

05:18:27 Sen. Phillips

05:18:42 Rep. White

05:20:04 Mr. Kolman

05:20:38 Rep. White

05:20:59 Rep. White discussed finding 3 - the USFS does not have records to document road closures prior to the early 1990s.

05:21:49 Mr. Kolman

05:22:23 Rep. White

05:22:38 Sen. Keane said the finding of fact changes the tone of the report.

05:23:36 Rep. White

05:24:49 Sen. Keane

05:25:55 Rep. White

05:26:33 Rep. White discussed finding 4 - actual number of USFS closed roads is not known.

05:27:29 Sen. Vuckovich commented on finding 2.

05:28:07 Rep. White

05:28:55 Sen. Vuckovich

05:29:05 Rep. White

05:29:12 Sen. Phillips

05:29:38 Sen. Phillips suggested that staff offer key findings in the same way that the report was assembled.

05:30:23 Mr. Kolman

05:32:02 Sen. Vuckovich

05:32:09 Mr. Kolman

05:32:51 Rep. White commented on finding 2.

05:35:19 Mr. Kolman

05:36:00 Rep. White

05:36:43 Rep. White continued the discussion on finding 4.

05:37:17 Mr. Kolman

05:37:41 Rep. White

05:37:55 Mr. Kolman

05:38:41 Mr. Lindler

05:39:56 Rep. White

05:40:57 Rep. Lieser

05:42:19 Rep. Ellis asked about finding 3.

05:43:09 Mr. Kolman

05:43:53 Rep. Ellis

05:44:29 Rep. White
05:46:05 Rep. Ellis asked if members of the EQC will be able to comment on the draft report.
05:47:08 Mr. Kolman
05:48:04 Sen. Ripley
05:49:25 Sen. Phillips
05:50:18 Rep. White
05:50:49 Rep. White discussed finding 5 - the Bureau of Land Management (BLM) does not have a statewide inventory of roads.
05:51:37 Rep. White discussed finding 6 - do not know if road closures created isolated parcels.
05:52:42 Mr. Lindler
05:53:29 Rep. White
05:53:46 Sen. Ripley
05:53:57 Rep. White
05:54:27 Mr. Lindler
05:55:07 Rep. White
05:55:16 Rep. White discussed finding 7 - road law from HB 352.
05:56:49 Rep. White discussed finding 8 - elk distribution on private land has increased by 17% since 2004.
05:57:38 Rep. White discussed finding 9 - 80 hunting districts are over elk target population.
05:57:58 Mr. Kolman
05:58:05 Rep. White
05:59:31 Rep. White discussed finding 10 - 2 hunting districts are 10 times over elk population objective.
06:00:18 Rep. White discussed finding 11 - there is no relationship between isolated parcels and hunter success rates.
06:05:45 Sen. Vuckovich
06:05:55 Rep. White
06:06:17 Sen. Vuckovich
06:06:25 Rep. White
06:06:49 Mr. Kolman
06:08:59 Mr. Lindler
06:09:48 Rep. Manzella
06:10:04 Mr. Kolman
06:11:17 Rep. Manzella
06:12:01 Mr. Kolman
06:12:29 Rep. Manzella commented on finding 3.
06:13:12 Mr. Kolman
06:13:47 Sen. Smith commented on the draft report.
06:16:06 Rep. White commented on the Oregon study regarding the direct impact of roads and traffic on elk.
06:17:22 Rep. White asked Mr. Kolman about Montana Forest Service roads.
06:18:11 Mr. Kolman
06:18:29 Rep. White asked about the statistics on elk killed in 2014.
06:19:10 Mr. Kolman
06:19:30 Rep. White

06:19:42 Mr. Kolman
06:19:58 Rep. White finished his presentation.
06:20:20 Sen. Vuckovich opened discussion on further action.
06:20:34 Rep. Bennett
06:21:15 Rep. White
06:25:39 Sen. Phillips
06:26:23 Sen. Vuckovich opened discussion on next steps.
06:26:45 Rep. Lieser said he recommends that the EQC review the draft report and submit any findings to staff so they can be combined and discussed at the May meeting.

06:27:40 Sen. Vuckovich
06:27:51 Rep. Lieser
06:27:58 Mr. Kolman said he will let the EQC know when he needs to receive comments by so they can be included in the mailing for the May meeting.

06:28:45 Sen. Keane
06:29:56 Rep. White
06:30:18 Rep. Curdy

ADJOURN

06:31:39 Sen. Vuckovich adjourned the meeting at 4:33 p.m.

CI0099 6103nsxb.



ENVIRONMENTAL QUALITY COUNCIL

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MIKE PHILLIPS
RICK RIPLEY
CARY SMITH

PUBLIC MEMBERS
SCOTT ASPENLIEDER
BROOKE ERB
BERT LINDLER
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

March 10, 2016
Room 172, Capitol Building
Helena, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Please contact the Legislative Services Division at 406-444-3064 for more information.

COMMITTEE MEMBERS PRESENT

SEN. GENE VUCKOVICH, Chair
REP. JERRY BENNETT, Vice Chair

SEN. JIM KEANE
SEN. MIKE PHILLIPS
SEN. RICK RIPLEY
SEN. CARY SMITH

REP. WILLIS CURDY
REP. JANET ELLIS
REP. ED LIESER
REP. THERESA MANZELLA
REP. KERRY WHITE

MS. BROOKE ERB
MR. BERT LINDLER
MR. TIM BAKER

COMMITTEE MEMBERS EXCUSED

SEN. JOHN BRENDEN
MR. ROY MORRIS
MR. SCOTT ASPENLIEDER

STAFF PRESENT

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

AGENDA ([Attachment 1](#))

VISITORS' LIST ([Attachment 2](#))

COMMITTEE ACTIONS

- The Environmental Quality Council (EQC) approved the minutes from January 13 and 14.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Vuckovich called the meeting to order at 8:01 a.m. The secretary called the roll. ([Attachment 3](#)) Mr. Aspenlieder was excused and left his proxy with Rep. White. Mr. Morris was excused and left his proxy with Sen. Keane. Sen. Brenden was excused and left his proxy with Sen. Ripley. ([Attachment 4](#))

COORDINATION OF PERMITS FOR ENVIRONMENTAL PROJECTS

00:01:11 Joe Kolman, legislative environmental analyst, Legislative Services Division, said the agenda topic will provide an overview of how state agencies deal with projects that require permits and how they coordinate with regulations from other agencies. Mr. Kolman said the *Montana Index of Environmental Permits* is prepared by the Legislative Environmental Policy Office and provides a list of permits needed in the state. ([Exhibit 1](#))

00:03:10 Rep. Bennett said he recently went through the permitting process and is interested in learning about the factors that inhibit agencies from working together in order to help other people go through the process.

00:03:42 Sen. Ripley entered the meeting.

- 00:05:06 Kristi Ponozzo, public policy director, Department of Environmental Quality (DEQ), said DEQ coordinates heavily with other state and federal agencies. She said they have several resources and services to assist in navigating the permitting process.
- 00:09:47 Shawn Thomas, administrator, Trust Land Management Division, Department of Natural Resources and Conservation (DNRC), discussed DNRC's processes and how it coordinates with other agencies on state trust lands.
- 00:12:44 Mr. Baker entered the meeting.
- 00:16:20 Jean Riley, transportation planning engineer, Rail, Transit, and Planning Division, Montana Department of Transportation (MDT), said when MDT receives a project it looks at what substantially and permanently impacts direct access to an MDT roadway or facility.
- 00:18:10 Ms. Riley provided a copy of *MDT's Guide to the System Impact Process*.
[\(Exhibit 2\)](#)

Sen. Vuckovich left the meeting and gave the duties of the chair to Rep. Bennett.

Public Comment: None

Committee Questions and Discussion:

- 00:20:48 Mr. Lindler commented on the sculpture park in Lincoln.
- 00:20:59 Rep. White asked about the permitting process and if there are any frustrations when following state law and any suggestions for speeding up the process.
- 00:21:32 Mr. Thomas said natural resource management is complex and that the DNRC routinely looks at the statutes and administrative rules to try and find efficiencies and ways to make things work more effectively.
- 00:22:48 Rep. Lieser asked about challenges with public interaction and the impact it has on the process. Ms. Ponozzo said all of the agencies encourage collaboration and comments from the public and want to know if there are any concerns.
- 00:24:43 Sen. Keane said part of the problem is with the people who are applying for permits.
- 00:26:25 Rep. Bennett asked Ms. Ponozzo about her recommendations for someone just starting out in business that needs help with the permitting process. Ms. Ponozzo said that John Podolinsky, small business ombudsman, DEQ, can help with coordinating permit actions with state and federal agencies.
- 00:28:29 Rep. Bennett asked Ms. Riley about an experience he had that required access to a state highway.
- 00:31:55 Rep. Bennett thanked the agencies for their participation.

Sen. Vuckovich resumed the role of chair.

SAGE-GROUSE CONSERVATION UPDATE

- 00:32:57 Carolyn Sime, program manager, Montana Sage Grouse Habitat Conservation Program, provided an update on the sage grouse conservation program. She said the goal of the governor's conservation strategy is to maintain viable grouse and viable habitats and to maintain flexibility to manage lands, economy, and wildlife.
- 00:34:18 Ms. Sime discussed the governor's executive order.
- 00:50:13 Ms. Sime discussed the stewardship grant fund.
- 00:54:38 Ms. Sime discussed the mitigation framework.

Public Comment: None

Committee Questions and Discussion:

- 00:56:31 Rep. Lieser asked Ms. Sime where the sage grouse review process fits in with the National Environmental Policy Act (NEPA) and the Montana Environmental Policy Act (MEPA). Ms. Sime said it is early in the process.
- 00:58:49 Sen. Keane said the Montana Sage Grouse Oversight Team (MSGOT) hasn't spent any of the grant money yet. He asked for an update at the next EQC meeting indicating the amount of money that has been spent and what projects were funded. He asked what the intent is for the \$5 million. Ms. Sime said the \$5 million is from the revolving fund and is intended to generate conservation credits. She said their goal is to fund as many projects as they can.
- 01:00:57 Sen. Keane asked Ms. Sime if the money is from SB 256 (2015). Ms. Sime said it is from SB 261 (2015), the Montana Sage Grouse Stewardship Act.
- 01:01:29 Rep. Curdy asked Ms. Sime if conservation easements are included in stewardship grants and conservation credits. Ms. Sime said they are.
- 01:02:02 Rep. Curdy asked Ms. Sime if they are aggressively pursuing conservation easements.
- 01:03:38 Rep. White asked Ms. Sime if they are tracking the success of the program based on habitat conservation or on the number of sage grouse. Ms. Sime said they are tracking both.
- 01:06:26 Rep. White asked Ms. Sime about the sage grouse that are being translocated to Canada. Ms. Sime redirected the question to the Department of Fish, Wildlife, and Parks (FWP).
- 01:07:16 Catherine Wightman, wildlife habitat coordinator, FWP, said the agency agreed to send 40 birds to Canada in mid-April.
- 01:08:20 Sen. Ripley asked Ms. Sime if the MSGOT can make suggestions if changes are needed to the executive order. Ms. Sime said the executive order directs the MSGOT to consider areas of uncertainty and to continue an adaptive approach through implementation.
- 01:10:01 Sen. Ripley asked Ms. Sime about changes to the decibel level. Ms. Sime said they will be looking at the issue.
- 01:10:58 Sen. Ripley asked Ms. Sime what the penalty is for violating the executive order. Ms. Sime said there is no enforcement mechanism in the executive order and the program's role is only to make recommendations.
- 01:12:57 Sen. Phillips asked Ms. Sime if other states are taking their conservation efforts seriously. Ms. Sime said they are.
- 01:14:06 Sen. Keane said the revolving fund money was in SB 261.

COMPLIANCE AND ENFORCEMENT REPORTS

01:14:50 Mr. Kolman said the compliance and enforcement reports are a result of a 1997 EQC study and are a way to look at how the Department of Agriculture, the DNRC, and the DEQ enforce some of the regulations they have.

Department of Natural Resources and Conservation

01:16:46 John Tubbs, director, DNRC, presented the agency's compliance and enforcement report. **(Exhibit 3)**

01:17:02 Mr. Tubbs discussed the Forestry Assistance Program.

01:20:03 Mr. Tubbs discussed the Board of Oil and Gas Conservation and the Oil and Gas Conservation Division.

01:21:56 Mr. Tubbs discussed the Trust Land Management Division.

01:28:15 Mr. Tubbs discussed the Water Resources Division.

Public comment: None

Committee Questions and Discussion:

01:35:09 Mr. Lindler asked Mr. Tubbs if the DNRC regulates dams at sewage treatment ponds. Mr. Tubbs said it does, but relies on the DEQ permit for safety and dam certification.

01:36:39 Rep. Curdy asked Tim Davis, administrator, Water Resources Division, DNRC, about the use of flow meters on agriculture projects. Mr. Davis said the use of gauges as a measuring device on a headgate diversion structure is very common.

Department of Environmental Quality

01:38:56 John Arrigo, administrator, Enforcement Division, DEQ, presented an overview of DEQ's compliance and enforcement report. **(Exhibit 4)**

01:39:57 Mr. Arrigo discussed the activities and efforts taking place to promote compliance assistance and education.

01:43:01 Mr. Arrigo discussed the size and description of the regulated community and the estimated proportion of that community that is in compliance.

01:45:00 Mr. Arrigo discussed the number, description, method of discovery, and significance of noncompliance, including those non-compliances that are pending.

01:46:38 Mr. Arrigo described how the department addresses the non-compliances identified in subsection (3) and a list of non-compliances left unresolved.

01:51:27 Mr. Arrigo discussed the reporting requirement quantitative trend information.

Public Comment: None

Committee Questions and Discussion:

01:53:16 Mr. Lindler asked Mr. Arrigo about the enforcement actions and what they include.

01:54:12 Rep. Curdy asked Mr. Arrigo about local water systems and what they are required to test for. Mr. Arrigo re-referred the question.

01:55:06 Jon Dilliard, bureau chief, Public Water Supply and Subdivisions Bureau, DEQ, said there are 85 different parameters that water systems test for and it varies by the type of system.

01:56:19 Rep. Curdy asked Mr. Dilliard about procedures in place to prevent an issue with drinking water contamination like what happened in Flint, Michigan.

01:57:49 Rep. Curdy said he is concerned about Montana's aging water system and that we need to be sure that the citizens of Montana will never be in a similar situation.

01:58:58 Rep. Ellis asked about the chart showing an the increase in the amount of hazardous waste generated. Ed Thamke, bureau chief, Waste and Underground Tank Management Bureau, DEQ, said the generation of hazardous waste is cyclic and depends on what the facilities that DEQ regulates might be doing in a particular year.

02:02:10 Rep. White asked Mr. Arrigo about the permit process for a project that has the potential to discharge a pollutant, what DEQ does to find out who is accountable if there is a failure, and if DEQ has any liability. Mr. Arrigo said DEQ has established construction standards for public wastewater and public drinking water systems.

02:07:09 Rep. Curdy said he would like to talk to the Air Quality Bureau chief at the break.

02:07:38 Rep. Lieser asked why the FWP was not included in the compliance reports. Mr. Kolman said the reports required by statute are for enforcement of environmental regulations.

Department of Agriculture

02:08:55 Ron de Yong, director, Department of Agriculture, presented the agency's compliance and enforcement report. **(Exhibit 5)**

02:09:20 Mr. de Yong discussed the pesticide program.

02:22:20 Mr. de Yong discussed the groundwater protection program.

Public Comment: None

Committee Questions and Discussion:

02:27:09 Mr. Lindler said he hopes the pesticide training program does not diminish.

02:28:32 Recess

02:43:50 Reconvene

DNRC PROGRAM EVALUATION: FOREST MANAGEMENT

02:44:13 Mr. Kolman provided a copy of a letter from the Wood Products Association and said the EQC was given a letter from Stolze Lumbar. **(Exhibit 6)**

02:45:29 Mr. Kolman presented an overview of the Forest Management Bureau. **(Exhibit 7)**

02:48:31 Mr. Kolman discussed the timber sale process.

02:50:17 Mr. Kolman discussed the timber conservation license.

02:51:40 Mr. Kolman discussed contract harvesting.

02:54:03 Mr. Kolman discussed the forest improvement fee.

02:56:00 Mr. Kolman discussed inspection and enforcement of timber sales.

Public Comment:

02:57:33 Aimee Grmoljez, attorney, Crowley Fleck, said that Arch Coal is suspending its permitting efforts for Otter Creek Reserves.

Committee Questions and Discussion:

03:00:40 Rep. White asked Mr. Kolman about trends in harvest revenue and expenses. Mr. Kolman deferred to Sonya Germann, bureau chief, Forest Management Bureau, DNRC.

03:04:26 Rep. White asked Ms. Germann about the Forests in Focus Initiative and the Farm Bill, and if DNRC engages in any cooperative timber contracts on both DNRC and federally managed land at the same time. Ms. Germann said Matt Arno, local county forest advisor, Forest Assistance Bureau, DNRC, will be working with county commissioners to look at opportunities to do cooperative management.

03:07:01 Rep. White asked Ms. Germann how a wild and scenic river designation affects a management project. Ms. Germann said it does not have a noticeable effect.

03:08:48 Rep. Curdy asked Ms. Germann if the sustainable yield calculation is adjusted after large episodic events that result in salvage logging operations. Ms. Germann said it is.

03:11:26 Rep. Bennett asked Ms. Germann about the violation that occurred of the Stream Management Zone (SMZ) law.

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

None

OTHER BUSINESS

Approval of Minutes

03:14:33 Mr. Kolman said the EQC can approve the minutes from January as is and he will talk to Sen. Brenden at the next meeting.

03:14:49 **Motion/Vote:** Sen. Ripley moved to approve the minutes from January 13 and 14. The motion carried unanimously by voice vote. Mr. Morris, Sen. Brenden and Mr. Aspenlieder voted aye by proxy.

03:15:10 Mr. Kolman said the next EQC meeting is scheduled for May 4 and 5. He said he will provide the EQC with more information about the findings and recommendations for the HJ 13 study.

03:15:37 Mr. Kolman said he will attend the Interagency Bison Management Plan meeting in West Yellowstone on April 6. He said the EQC may want to have an agenda item on bison at the May meeting.

03:16:09 Sen. Phillips said the Legislative Audit Division is doing an audit on brucellosis and it would be helpful to have a copy. Mr. Kolman said the report will not be finished in time for the meeting.

ADJOURN

03:17:03 Sen. Vuckovich adjourned the meeting at 11:18 a.m.
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