



ENVIRONMENTAL QUALITY COUNCIL

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

GOVERNOR JUDY MARTZ
DESIGNATED REPRESENTATIVE
Todd O'Hair

HOUSE MEMBERS
Debby Barrett
Paul Clark
Christopher Harris
Don Hedges
Monica J. Lindeen
Doug Mood

SENATE MEMBERS
Mack Cole
Pete Ekegren
Bea McCarthy
Walter L. McNutt
Jon Tester
Ken Toole

PUBLIC MEMBERS
Tom Ebzery
Julia Page
Ellen Porter
Howard F. Strause

LEGISLATIVE
ENVIRONMENTAL
ANALYST
Todd Everts

ENVIRONMENTAL QUALITY COUNCIL

MAY 23rd & 24th, 2001

FINAL MINUTES

Approved September 10, 2001

COUNCIL MEMBERS PRESENT

SEN. BEA McCARTHY, Chair
REP. DOUG MOOD, Vice Chair
SEN. MACK COLE
REP. DEBBY BARRETT
SEN. PETE EKEGREN
REP. CHRIS HARRIS
MR. TODD O'HAIR

SEN. WALTER McNUTT
REP. DON HEDGES
SEN. JON TESTER
SEN. KEN TOOLE
REP MONICA LINDEEN
MR. HOWARD STRAUSE
MS. JULIA PAGE

COUNCIL MEMBERS EXCUSED

REP. PAUL CLARK
MR. TOM EBZERY

MS. ELLEN PORTER

STAFF MEMBERS PRESENT

Mr. Todd Everts
Ms. Krista Lee Evans
Mr. Larry Mitchell

Ms. Mary Vandebosch
Ms. Holly Jordan, Secretary

AGENDA

[Attachment #1](#)

VISITORS' LIST

[Attachment #2A & 2B](#)

COUNCIL ACTION

- Approved minutes from the EQC Meetings of September 11 and 12, 2000.
- Elected Senator McCarthy Chair and Representative Mood Vice Chair.
- Allocated resources and selected work plan options.
- Adopted interim calendar.

I. CALL TO ORDER – ROLL CALL/INTRODUCTIONS OF COUNCIL MEMBERS

a. Call to Order

SEN. McCARTHY called the meeting to order at 1:30 p.m. and roll call was noted (**Attachment #3**).

b. Introductions

(Tape 1, Side A, Time 2.0)

The Council members and audience introduced themselves.

II. ADMINISTRATIVE MATTERS

(Tape 1, Side A, Time 6.7)

a. Adoption of Minutes

The minutes from the EQC Meetings of September 11 and 12, 2000 were adopted.

b. EQC's Tight Interim Budget

MR. EVERTS went over the budget for the 2001 Environmental Quality Council Interim Committee. He stated that the committee has a very tight budget. This interim there are only 7 meetings as compared to the usual 8 to 9 meetings. He asked that any subcommittee meetings be set the same days as scheduled meetings. He stated there is a contingency budget that Legislative Council has control over of about \$100,000. If

this committee views something as being very important and will need additional money then there is the option to go before Legislative Council.

SEN. COLE stated there is some money left over from last interim and, if possible, some things should be done before July 1st so the 2003 budget is not hit quite as hard.

REP. MOOD concurred with **SEN. COLE's** suggestion.

c. Publications

MR. EVERTS explained EQC publications.

REP. LINDEEN asked **MR. EVERTS** if the Eminent Domain publication will be updated due to the changes made to the law during the 2001 session. **MR. EVERTS** deferred the question to **MS. EVANS** who stated that the bills that were adopted during the session were integrated into the handbook before it was made final. **SEN. McCARTHY** asked **MS. EVANS**, then the only ones that we don't have in there are the MEPA ones? **MS. EVANS** stated the MEPA handbook has not been updated and it may need to be.

SEN. McCARTHY stated anyone can get these publications by telephone or e-mail order and many county extension offices carry the publications. The publications are free.

III. COUNCIL AND STAFF RESPONSIBILITIES

(Tape 1, Side A, Time 20.7)

a. Purpose of the EQC

MR. EVERTS talked about the purpose and history of the Environmental Quality Council (EQC).

SEN. McCARTHY stated that **MR. O'HAIR** is a non-voting member of the Council. The Council does not vote too often as they try to reach consensus on most of the issues.

b. EQC Statutory Responsibilities

(Tape 1, Side A, Time 26.9)

MS. EVANS gave an overview of the statutory responsibilities that are assigned to the EQC. She referred to the handbook (**Exhibit #1**). She gave a power point presentation.

SEN. TESTER asked **MS. EVANS** if any new projects have been granted. **MS. EVANS** deferred the question to **MR. EVERTS** who stated he is familiar with the Energy Loan Program that has made loans and grants.

SEN. COLE stated he sees there are new items primarily dealing with energy.

REP. MOOD asked **MR. EVERTS** if the energy program is something new. **MR. EVERTS** stated it has been in place since 1991 when the first energy policy statement process was put into place and it has been added to over time.

c. EQC Draft Rules and Procedures

(Tape 1, Side A, Time 35.9)

MR. MITCHELL went over the EQC's rules and procedures. He gave a power point presentation.

SEN. COLE moved to have any changes to the rules brought before the committee by the next meeting.

SEN. McCARTHY asked **MR. MITCHELL** to have those changes done by the next meeting. She stated, any Council member who has any changes should get those to **MR. MITCHELL** as soon as possible.

SEN. TESTER asked **MR. MITCHELL**, regarding the rules on telephone usage, has there been abuse in the past? **MR. MITCHELL** stated that he is not sure. **MR. EVERTS**

stated that came into being in 1993 and it was just a concern that the Council had, nothing more.

SEN. TESTER asked **SEN. COLE** if it is in the works to have a tour of the coal bed methane wells? **SEN. COLE** stated it is his recommendation that the Council take a tour of the coal bed methane areas.

SEN. TOOLE asked **MR. EVERTS** if the tour can be scheduled before July 1st or does the tour have to take place before July 1st to use the extra funds. **MR. EVERTS** stated the tour does have to take place prior to July 1st.

MR. STRAUSE asked **MR. EVERTS** if telephone conference meetings will go against Montana's open meeting provisions? **MR. EVERTS** stated the public notice requirements would have to be followed. It could be a conference call with staff on one end and the public audience on one end. He stated that will be looked into to make sure that all the laws can be followed.

REP. HEDGES asked if there is a need in the rules to update the use of the computer research and e-mail resources? **MR. MITCHELL** stated the computers are used daily by the staff. **REP. HEDGES** asked if he would be able to access a state computer and do research. **MR. EVERTS** stated, you will be able to access the state home page which will access a number of areas in which research can be done. He stated that he does not believe it is necessary to include that in the rules.

SEN. McCARTHY asked, to use the extra money would the committee have to have a meeting prior to July 1st? **SEN. COLE** stated he would think so. **SEN. McCARTHY** stated, if the committee met in Billings then they would be closer to the area that needs to be toured. She also stated that she does not think that is possible before July 1st.

SEN. TESTER asked is there a possibility of using video conferencing for some meetings? **MR. EVERTS** stated that is something the committee has to look at. **SEN. McCARTHY** stated the Eminent Domain group did that last interim and it cost around \$5,000 for one evening. She stated that the committee should look into any proposals. **SEN. TESTER** stated he checked into Vision Net which is \$30.00 per hour, per site. If

there were seven sites then that would cost \$210.00 per hour plus a 20% discount. He thinks it is doable. **SEN. McCARTHY** stated she agrees with that and it has to be looked into.

d. EQC decision making Process

(Tape 1, Side A, Time 56.3)

MR. EVERTS went over the decision making process.

e. Staff Mission and Responsibilities

(Tape 1, Side A, Time 58.5)

MS. VANDENBOSCH went over the staff's mission and responsibilities. She also introduced the individual staff members.

SEN. McCARTHY stated things come up during the interim that are totally unexpected, she gave an example.

IV. SUMMARY AND DISPOSITION OF EQC LEGISLATION

(Tape 1, Side A, Time 74.0)

MS. EVANS stated, last interim the EQC requested eight pieces of legislation and out of those six passed. She gave a quick summary of those pieces of legislation: SJ 3, died in the House Natural Resources Committee at the request of the sponsor; SB 33, passed; HB 94 passed; HB 92 was tabled in House Appropriations; SB 6 passed; SB 7 passed; HB 22 passed; and HB 93 passed.

V. INTRODUCTION AND REVIEW OF INTERIM WORK PLAN OPTIONS

(Tape 1, Side A, Time 80.5)

a. Work Plan Option Matrix and Introduction

MR. EVERTS gave a power point presentation regarding the work plan process. He handed out the EQC Draft Work Plan (**Exhibit #2A**) and the EQC Draft Work Plan Appendices (**Exhibit #2B**). He then walked through the structure of the matrix (**Exhibit #3**).

b. Review of Individual Work Plan Elements

(Tape 1, Side B, Time 3.7)

1. Coal Bed Methane

MS. VANDENBOSCH went over the purpose of HJR 27. She stated HJR 27 was ranked #2 in the poll of Legislators. She stated HJR 27's specific purpose is to oversee the EIS currently taking place. The EQC does have statutory responsibilities relating to water including to advise the Legislature on the adequacy of Montana's water policy. She went over the options the committee has regarding this issue.

SEN. TOOLE asked **MS. VANDENBOSCH** if there are federal agencies participating in this as well. **MS. VANDENBOSCH** stated the federal Bureau of Land Management is participating and they are the ones who hired the contractor to do the EIS. The state and federal agencies have a memorandum of agreement and all three are lead agencies. This is going to be done to satisfy both the federal and the state laws. **SEN. TOOLE** asked, as part of the EIS process do they do public hearings? **MS. VANDENBOSCH** stated yes. **SEN. TOOLE** asked **SEN. COLE** if the committee is doing this function of oversight and providing an influential forum would those be of different substance then what the agency is doing with the EIS? **SEN. COLE** stated in the last session the federal people were brought in and there was some discussion on this issue. There have been meetings where many of the people who are involved or

affected by this had input. He stated the EIS should be completed by September of 2002. The EQC should take the lead as far as providing the information.

SEN. HEDGES asked **MS. VANDENBOSCH** when the EIS would be completed. **MS. VANDENBOSCH** stated the target date is currently March of 2002. There is a chance that could be pushed back but it should be done by July 2002. She stated that during the EIS process there have already been scoping meetings and there will be opportunities for public comment. HJR 27 requested the EQC to provide a public forum for concerns about the timeliness and cost effectiveness of completion of the EIS.

2. Forest Fuel-Air Quality Management

(Tape 1, Side B, Time 16.3)

MR. MITCHELL went over the purpose of HJR 21. He stated HJR 21 was ranked number 15 out of 20 in the polling results. He went over the options the committee has regarding this issue.

SEN. McCARTHY asked **MR. MITCHELL** could the committee combine the Forest Fuel-Air Quality Management with the DNRC Fire Management Program Funding? **MR. MITCHELL** stated that they are two diametrically opposed studies. They have very little, if anything, in common. He stated, it is really up to the Council on how they want to conduct these studies.

3. DNRC Fire Management Program Funding

(Tape 1, Side B, Time 24.3)

MS. EVANS went over the purpose of HJR 42. It is up to the EQC on whether these studies be conducted jointly or separately. She went over the options the committee has regarding this issue.

SEN. COLE stated there are other entities working on this issue.

SEN. McCARTHY stated, this issue was ranked 12th in the Legislative poll and the Forest Fuel-Air Quality Management issue was ranked 15th, point being they were ranked pretty close together.

REP. MOOD stated one study wants to start more fires and the other study wants to put them out. The recommendation from the full Legislative Staff on HJR 21 is that the Council not proceed with the issue.

MR. EVERTS stated the Legislative Services Division Staff made that recommendation and it was based on resources and ranking of the study.

SEN. TESTER asked **REP. MOOD**, is it correct to say that everything ranking 12th and above they recommend not to be funded by the Legislative Staff budget? **REP. MOOD** stated that is exactly correct.

4. MEPA

(Tape 1, Side B, Time 34.4)

MR. MITCHELL went over the work plan options regarding this topic.

REP. MOOD asked **MR. MITCHELL** are there other things, besides the modification of the handbook and looking at the rules, that have to be done during the interim? **MR. MITCHELL** stated not necessarily but the Council might want to revisit the recommendations of the last MEPA subcommittee.

SEN. McCARTHY asked **MR. MITCHELL** if the training programs of various agencies need to be updated and reinstated. **MR. MITCHELL** deferred the question to **MR. EVERTS** who stated that is part of the work plan options and it was also a part of one of the recommendations of the study report.

MR. STRAUSE asked **MR. MITCHELL** if a subcommittee has to be active for Option B. **MR. MITCHELL** stated Option A and B would probably require a subcommittee of some sort.

5. Water Policy

(Tape 1, Side B, Time 43.0)

MS. VANDENBOSCH stated water policy includes water quantity and water quality. She went over the options regarding this issue. She stated that the Council has a statutory responsibility to address water policy during the interim.

MR. STRAUSE asked **MS. VANDENBOSCH** if there was a water policy subcommittee how much work would that subcommittee be able to do on the coal bed methane issue? Could the Council choose Option A for both topics? **MS. VANDENBOSCH** stated if you formed a water policy subcommittee and chose Option A and coal bed methane was one of the major issues you were focusing on then there may be a little bit of overlap there. It depends on how many issues the Council wants to address.

SEN. McCARTHY asked **MS. VANDENBOSCH** what the Council did last interim on water policy. **MS. VANDENBOSCH** stated it was about .5.

MS. VANDENBOSCH stated if the Council chose to address several other water policy issues and coal bed methane that would dominate the EQC's agenda and they would have to go pretty light on all of the other issues.

MS. PAGE stated the second statutory responsibility that was mentioned was the Council's obligation to look at things that other entities are doing that affect our water resources. During the session there were a number of bills with different points of view regarding what a beneficial use is and what the effect of coal bed methane would be on water resources. Whether it is covered here or in the coal bed methane study it seems there is an area of inquiry for the Council.

6. Energy Policy

(Tape 1, Side B, Time 55.4)

MR. EVERTS read the state policy on energy and the history of the energy policy practices of the EQC. He went over the options regarding this issue.

REP. HARRIS asked **MR. EVERTS** if the Council was involved in anyway with the deregulation effort prior to the 1997 session. **MR. EVERTS** stated no.

SEN. TOOLE passed out a document entitled "Proposal to Study Conservation and Renewable Energy Potential in Montana" (**Exhibit #4**) and he went over that document.

SEN. McCARTHY asked everyone to read the document for tomorrow's discussion.

SEN. COLE stated this is only one part of the total.

REP. MOOD asked **MR. EVERTS** if he is attending the Transition Advisory Council.

MR. EVERTS stated yes, he is staffing the Council. **REP. MOOD** asked **MR. EVERTS** to keep the EQC up to date on what goes on in the Transition Advisory Council.

7. Environmental Conditions and Trends

(Tape 1, Side B, Time 70.3)

MR. MITCHELL stated this is a statutory requirement of the EQC and its duties under part 3 of MEPA. He went over the history of this issue and the options regarding the issue.

8. Oversight

(Tape 1, Side B, Time 79.4)

MR. EVERTS stated the EQC has statutory authority for oversight functions. He went over the history of oversight and pre-introduced bills.

SEN. TESTER asked **MR. EVERTS** if the EQC has the ability to say Legislative Council cannot pre-introduce bills. **MR. EVERTS** stated, that is potentially the implication under the current rules. Legislative Council has to figure out how this is going to proceed and at that time the EQC will be informed of their decision. **MR. EVERTS** went over the history of pre-introduced bills and the problems the Council has been faced with.

REP. MOOD stated that he is under the impression that the eminent domain and MEPA study from the last interim took up so much of the Council's time that they really didn't spend a whole lot of time on the statutory obligations. **MR. EVERTS** stated that is correct. **REP. MOOD** asked, would it be best to assign more time to the statutory obligations and perhaps reduce the load on some of the special obligations. **MR. EVERTS** stated that is entirely up to the Council.

9. 30 Year Introspective

(Tape 1, Side B, Time 85.6)

MR. EVERTS stated there are a lot of statutory responsibilities and this is just an optional item.

VI. PUBLIC COMMENT

(Tape 1, Side B, Time 86.3)

REP. CHRISTINE KAUFMANN stated she carried HJR 42 during the session. She sat on the Natural Resources Subcommittee for Appropriations and was startled to discover how fire suppression is funded. A readiness program is funded up until the fire starts.

When the fire begins the program is no longer funded. It is smart government and smart budgeting to prepare for the inevitable fire season. She urged the Council to put some appropriate weight on the study.

REP. HARRIS stated it is not generally known how expensive it is to fight fires when there is a structure involved as opposed to undeveloped property. The chief beneficiary of that, other than the owners of the property, would be the insurance companies. If the public is paying for fighting fires to save that structure there is not insurance money being paid out. It might be worthwhile to look at the balance of those resources.

REP. KAUFMANN stated the way we fight fires is dramatically altered by the presence of structures in those areas. The cost to bring the Bucksnot fire under control was about \$4.5 million. It would have cost a lot less if there weren't so many homes.

VII. HOUSEKEEPING

(Tape 1, Side B, Time 91.7)

SEN. McCARTHY went over some housekeeping matters.

The meeting was recessed at 5:00 p.m. and reconvened on May 24th at 8:00 a.m.

VIII. ELECTION OF THE EQC CHAIR AND VICE CHAIR

(Tape 2, Side A, Time .8)

a. Nominations for Chair

SEN. COLE nominated **SEN. McCARTHY** for Chair of the Council.

REP. LINDEEN nominated **REP. CLARK** for Chair of the Council.

b. Discussion

REP. LINDEEN stated that it is time a House member chairs the Council.

REP. HARRIS stated he served with **REP. CLARK** on the House Judiciary Committee and he is scrupulously fair when he takes the gavel. His absence should not be an indicator of how much of a contribution he would make to the Council.

SEN. McCARTHY stated this is her third session on EQC and she is the senior Senator. She gave a history of her work on the Council. She asked for the Council's support and thanked **SEN. COLE** for the nomination.

SEN. COLE stated he has worked very close with **SEN. McCARTHY** and she is very fair about taking a look at all of the issues. He suggested to go with a Democratic Senate Chair and Republican House Vice-Chair.

REP. MOOD stated he has a proxy for Ellen Porter and will be voting for her.

SEN. TESTER asked **MR. EVERTS** for a history who has chaired the Council. **MR. EVERTS** gave that history. **SEN. TESTER** stated it is not a question of confidence because **SEN. McCARTHY** has the utmost confidence. The argument is that the last three interims have seen more Senate influence in the Chair position.

c. Roll Call Vote

(Tape 2, Side A, Time 8.8)

A Roll Call Vote was taken (**Attachment #4**) and **SEN. McCARTHY** was elected Chair.

d. Nominations for Vice-Chair

(Tape 2, Side A, Time 11.1)

SEN. McNUTT nominated **REP. MOOD** for Vice-Chair of the Council.

REP. HARRIS nominated **REP. CLARK** for Vice-Chair of the Council.

REP. BARRETT seconded the nomination of **REP. MOOD** for Vice-Chair of the Council.

e. Discussion

REP. MOOD asked the Council to support his nomination. He talked about his history in the Natural Resource industry. He stated that he can work very well with the staff and the Chair and he would have time to devote to his work.

REP. HARRIS stated **REP. CLARK** would be quite fair and worthy of the Vice-Chair position.

SEN. TESTER stated his vote has nothing to do with confidence but does have to do with procedure. He stated that in a sense of fairness and bi-partisanship he will support **REP. MOOD**.

SEN. McNUTT stated he finds **REP. MOOD** very fair and open-minded and that he would be the best Vice-Chair.

f. Roll Call Vote

(Tape 2, Side A, Time 15.6)

A Roll Call Vote was taken (**Attachment #5**) and **REP. MOOD** was elected Vice-Chair.

IX. CONTINUATION OF ITEM V. REVIEW AND DISCUSSION OF WORK PLAN

MR. EVERTS asked the Council to present any "Other Topics" they may have.

SEN. TOOLE went over his intentions with his handout titled "Proposal to Study Conservation and Renewable Energy Potential in Montana" (**Exhibit #4**). He urged the Council to make this issue a major priority.

REP. HARRIS stated in the state CECRA law there is a very large set of provisions having to do with voluntary cleanup of hazardous waste sites. The whole purpose of that provision was to encourage voluntary cleanup. The trouble is that the law is so complicated that anyone looking at attempting to take advantage of that would say “forget it”. As a result, not a single voluntary cleanup has occurred in the four or five years CECRA has been on the books. He urged the Council to include this in the Oversight component but not to spend a huge amount of time on it.

REP. BARRETT stated that an item she would like to see in the work plan is the issue of sage grouse. There is a work plan on the sage grouse from the United States Fish and Wildlife Service. This species is in danger and should be addressed.

MR. EVERTS asked **REP. HARRIS** and **REP. BARRETT** if they are envisioning an agenda item for a meeting. **REP. HARRIS** stated yes and he would like to get input from the public. **REP. BARRETT** stated yes and she would like this to be monitored and watched and would like to have some public hearings on the subject. **MR. EVERTS** stated he would include those topics under Oversight.

SEN. COLE stated he thinks it would be very important for the Council to take some first hand looks at what is going on in the energy field.

REP. MOOD stated that the number one topic around the state is energy. He encouraged the Council to reserve staff time for the energy issue and encouraged a subcommittee to be appointed on that issue. He talked about conservation and the energy crisis in California.

SEN. McCARTHY stated, as the Council thinks about the work plan they should be thinking about how many subcommittees will be necessary on each issue. There could be major and minor subcommittees as done in the past. She also asked the Council members to think about what committees’ they would like to be on.

SEN. TESTER stated that his suggestion would be to for three major subcommittees, a Coal Bed Methane subcommittee which could include Water Policy, an Energy

committee that could overlap with Coal Bed Methane and an Oversight subcommittee including the Sage Grouse issue and the MEPA rules.

X. ADOPTION OF WORK PLAN OPTIONS

MR. EVERTS stated the decision the Council has to make today is what level of commitment the Council wants to put into each issue. He stated that the staff will keep a running total of the FTE Allocation.

(Tape 2, Side B, Time .1)

a. Coal Bed Methane

SEN. COLE moved that the Council take the banquet option and allocate .5 FTE to coal bed methane.

REP. HARRIS asked how the Council would devote their resources given the EIS is underway and part of the Council's task is to evaluate how that EIS is unfolding.

MS. VANDENBOSCH clarified that the EIS process is underway and the scoping is done. The banquet option contemplates doing more than oversight of the EIS. It would allow the Council to look at, at least one policy issue and to do some program oversight. There is permitting going on now even pending the EIS. In addition there is litigation and in the past, members have been interested in that. It also gives the Council the option to look at the current law and suggest policy issue.

SEN. COLE stated the other aspect of this is to make sure the Council is knowledgeable as possible as the EIS progresses about Coal Bed Methane and Energy in general.

SEN. McCARTHY asked if .5 sounded reasonable to the Council. She stated that the Council would be taking comments from the public at the end of the review of the matrix.

b. Energy

REP. MOOD suggested that the Council should allocate 1.0 FTE to the Energy issue. The magnitude of the issue and the importance to the state warrants a very in-depth analysis of the situation Montana is in.

SEN. McCARTHY asked if there were any objections to allocating 1.0 to Energy. No one objected.

c. Oversight & Environmental Conditions and Trends

REP. HARRIS stated if MEPA is included in Oversight then .75 FTE allocation would make sense.

MR. EVERTS suggested that the Council separate Oversight and MEPA and then make the resource allocations there. The .1 FTE accounts for topics like the voluntary cleanup and the Sage Grouse coming up on the agenda under Oversight. In terms of staff organization it would be helpful for the Council to make a decision on Oversight and then make a decision on MEPA.

REP. HARRIS asked **REP. BARRETT** if she felt .25 FTE would be adequate to cover CECRA, Sage Grouse and other issues that may arise. **REP. BARRETT** stated yes. **REP. HARRIS** stated then his recommendation would be .25 FTE.

REP. MOOD asked **MR. EVERTS** if there is an overlap between Environmental Conditions and Trends and Oversight. **MR. EVERTS** stated there can be some overlap with Option D. **MR. MITCHELL** concurred. **REP. MOOD** stated that the statutory conditions were somewhat ignored in the last interim. It would probably be very appropriate to delegate staff time to those Oversight obligations. He stated that he has .25 FTE for Oversight but .4 FTE for Environmental Conditions and Trends. If there is overlap between those issues then there may be opportunity to trade the time back and forth as the staff feels necessary.

SEN. TESTER stated that he feels the Council will waste its time on Environmental Conditions and Trends until the agencies fully get behind developing benchmarks for

environmental trends. The Council could easily spend 2.85 FTE on environmental trends but the fact is that the Council won't get anything done. He isn't saying it isn't important but there are some things that are more addressable on the agenda.

MS. PAGE stated that she would concur in that. The concept of environmental trends is very important but she feels it would be more productive for the Council to work on issues that it can affect.

SEN. McCARTHY stated the Council will leave the issue at .4 FTE for the time and can go back and readjust.

d. Forest Fuel-Air Quality Management & DNRC Fire Management Program Funding

SEN. McCARTHY asked what would be the Council's pleasure to do on either of the Forest Management topics that are in the work plan.

SEN. TOOLE asked if somebody is already working on this topic.

MS. EVANS stated DNRC has done some preliminary work but she is not sure how much work has been done.

REP. HEDGES suggested that the Council do Option C for DNRC Fire Management Program Funding and put it on an agenda item for DNRC to give a briefing on where they are and the history of funding fires in the State of Montana. That can either be built on or eliminated in the future.

SEN. TESTER moved to do Option D on Forest Fuel-Air Quality Management. If the Council can get to it then it should but it is not a priority.

SEN. COLE stated that he would not go no action on Forest Fuel-Air Quality Management but do a little bit of research.

MR. EVERTS asked if the Council would like a .1 FTE or .2 FTE effort.

SEN. McCARTHY stated .1 FTE.

e. MEPA

SEN. McCARTHY stated the sense is that people would like to back away from MEPA and monitor what has been done in the last session.

REP. HARRIS stated that he agrees with **SEN. McCARTHY** and would like to include MEPA in Oversight.

SEN. McNUTT asked **MR. EVERTS** if updating the MEPA handbook is something that this Council does. **MR. EVERTS** stated it is not a requirement that you even have a handbook but this Council has had it and it has been very useful. The handbook is now out of date and it is a decision for the Council members if they want to update the handbook. He suggested the Council decide what level it wants this Oversight. **SEN. McNUTT** asked, if you were to update the handbook how much time would be required? **MR. EVERTS** deferred that question to **MR. MITCHELL** who stated he does not know how much time that would take.

SEN. COLE asked if the Council went with .1 FTE and put some time in there with the understanding that would be primarily for updating the handbook would that suffice?

MR. STRAUSE stated he was on the MEPA subcommittee and he does not see how the Council could possibly review and implement the recommendations that were made without at least a .3 FTE and possibly a .5 FTE. Many of the recommendations the subcommittee made involve revisions of the model rules and that was before the new statutes were passed. With the passage of those several bills that affect MEPA it is very important that the model rules be revisited otherwise every agency is going to have to come up with revisions of their own rules instead of this group coming up with one set of model rules. The recommendations that the subcommittee made last interim had a great deal to do with public input and making MEPA more user friendly. He suggested that the Council devote at least .3 FTE to MEPA.

REP. LINDEEN stated that she thinks the Council should back away from the MEPA issue but **MR. STRAUSE** makes a good point. It may be irresponsible for the Council to step away from the issue considering what a huge issue it was during the last Legislative session. She suggested to devote .3 FTE to MEPA.

SEN. McCARTHY stated the Council will leave MEPA at .3 FTE and adjust if necessary.

f. Water Policy

SEN. COLE stated the Council should combine Coal Bed Methane and Water Policy since they go hand in hand.

MS. VANDENBOSCH stated she would encourage the Council to combine the issues but to allocate the staff time separately.

SEN. COLE moved that as far as the committee is concerned Coal Bed Methane and Water Policy should be combined. As far as staff is concerned they should be separated.

MR. EVERTS stated that at this point the Council has over allocated at 3.05 FTE.

SEN. McCARTHY stated the Council would go back and readjust after they have gone over the issues.

g. Introspective

MR. EVERTS stated this issue is not required and it is up to the Council whether they want to pursue it or not.

SEN. McCARTHY asked if the committee would like to allocate some time to this issue. She stated that it would be appropriate to do something on this issue.

MS. PAGE stated that she feels the Council should take an overall look at all the different statutory responsibilities that it has and ask if it is reasonable to allocate time to this issue.

SEN. McCARTHY stated the Council will skip that issue with no action.

h. Adjusting the FTE

SEN. McCARTHY stated the Council is over .2 FTE and that needs to be adjusted.

REP. HARRIS moved to subtract .2 FTE from Environmental Conditions and Trends.

SEN. COLE asked if it would be a better use to take that .2 FTE out and move it to water.

REP. HARRIS stated he thinks that would be a better use. He withdrew his motion and agreed with **SEN. COLE**.

SEN. COLE moved to eliminate Environmental Conditions and Trends altogether and devote the .2 FTE to water policy.

SEN. McCARTHY stated there is now .4 FTE in water policy.

REP. LINDEEN asked if there is now .9 FTE dedicated to one subcommittee. **SEN. McCARTHY** stated they are going to be separated but they are going to be together.

SEN. McCARTHY stated the Council has now allocated 2.85 FTE.

SEN. TESTER stated that he believes the time allotted to HJR 21 and HJR42 could be better spent in Oversight. He suggested the committee increase the FTE on Oversight to .95 and eliminate the any study on HJR 21 and HJR 42.

SEN. McCARTHY asked for clarification of how **SEN. TESTER** came up with .95 FTE.

SEN. TESTER stated .95 FTE is the .25 FTE that was set aside for Oversight, .3 FTE that was set aside for MEPA and the .4 FTE that is freed up if the EQC decides not to do HJR 21 and HJR 42.

MR. STRAUSE agreed with **SEN. TESTER** because HJR21 and HJR42 both fell right at or under the cutoff point. Also, they involve areas that the EQC hasn't worked in before.

MR. EVERTS stated the Council's decision is whether they want to take the resources allocated to HJR 21 and HJR 42 and reallocate them under Oversight and MEPA.

SEN. TOOLE stated he would like to address MEPA. His concern is that more work on MEPA may be unnecessary. He is uncomfortable in taking HJR42 totally off the table.

SEN. TESTER stated he can't imagine how much staff time it would require to bring in DNRC for a hearing on the issue. It was not his intent to take all .4 FTE and put it towards MEPA, it was his intent to divide that time up. He thinks these two issues are very important but the time could be spent better somewhere else.

MR. EVERTS stated the Council could tell the staff how much time they want the staff to spend on the issue.

SEN. COLE asked if the Council could do some Oversight on HJR21 using that same philosophy.

i. Public Comment

Anne Hedges, Montana Environmental Information Center (MEIC), stated she looks at this and sees a scattered approach for the staff. There are a couple of really big issues that are only going to increase in public interest. She does not believe that enough time was allocated for Coal Bed Methane and the Council should go with .75 FTE instead of .5 FTE. She agrees that HJR21 and HJR42 should not have more than .05 allocated to them. They are interesting topics but are not as important as the other issue. Regarding MEPA, this is an issue that everyone wants to go away but it is not going to. She feels that .3 FTE is inadequate for MEPA. The issues before the Council are enormous. Energy and coal bed methane are where the resources should be focused.

(Tape 3, Side A, Time .1)

j. Decisions

SEN. COLE recommended to move to .75 FTE for the Coal Bed Methane.

SEN. TESTER stated, if you bump it up to .6 FTE and combine it with Water Policy then you will have one full FTE.

REP. HARRIS asked if it is possible to contract for any extra work for the Fire issues.

MR. EVERTS stated, it is a staff allocation issue and that the EQC's budget is inadequate to contract for more staff.

REP. LINDEEN stated she would like to allocate .1 FTE to HJR42 and get rid of the other resolution. HJR42 may save the state money in the long run.

MR. EVERTS went over the FTE's that the Council has adopted (See Exhibit #3).

REP. LINDEEN asked **MR. EVERTS** if Coal Bed Methane and Water Policy are combined into one subcommittee does that preclude that the subcommittee couldn't actually spend more time on one issue? **MR. EVERTS** stated, it is up to the Chair, Vice-Chair and subcommittee to determine the work plan for that issue.

SEN. McCARTHY stated it would be her recommendation that the Council consider two subcommittees as well as a minor subcommittee. An Energy Policy subcommittee; a Coal Bed Methane subcommittee and a Oversight subcommittee.

MR. EVERTS stated if you adopt these options then you know what your resource allocations are and then the Chair and Vice-Chair can determine the number of subcommittees.

SEN. TESTER stated, here we have Energy with a full FTE, Water Policy and Coal Bed Methane with a full FTE and Oversight with .75FTE. All three of those subcommittees are going to take a huge amount of time. He asked the Chair to for three separate groups for these subcommittees. He asked for comment on his suggestion for three separate groups.

REP. BARRETT stated she sees it the same way that **SEN. TESTER** does.

REP. MOOD stated he thinks the Council is moving toward two major subcommittees. Maybe the members who have more time should be on the Oversight committee.

MS. PAGE stated the variety of issues that the Oversight committee will be dealing with will require quite a bit of research. The way the meetings are scheduled is going to have a lot to do with the production of the Council.

The EQC took a break from the discussion to hear a report from the Governor's Drought Advisory Committee.

XI GOVERNOR'S DROUGHT ADVISORY COMMITTEE

(Tape 3, Side A, Time 12.0)

LT. GOVERNOR KARL OHS gave an update on the Governor's Drought Advisory Committee. He passed out The Governor's Report On The Potential For Drought In Montana For 2001 (**Exhibit #5**) and a Precipitation map (**Exhibit #6**).

a. Questions

SEN. TESTER asked **LT. GOVERNOR OHS** if there is anyway to make a recommendation that the fee charged to graze cattle be waived. **LT. GOVERNOR OHS** stated it is a good recommendation and he will try. The only frustration is that by the time the decision is made it is almost too late.

SEN. TOOLE asked **LT. GOVERNOR OHS** if the reservoirs are full and what the priorities will be. **LT. GOVERNOR OHS** stated, it depends on the system as every one is unique.

SEN. COLE asked **LT. GOVERNOR OHS** who determines a severe drought. **LT. GOVERNOR OHS** stated it is determined by the Palmer Index that determines soil moisture and the SWASI which is projected water supply. **SEN. COLE** asked if there could be some changes from the map. **LT. GOVERNOR OHS** stated he is sure there would be. **SEN. COLE** asked **LT. GOVERNOR OHS** if he thinks there will be more

counties opened up right away as far as Conservation Reserve Program is concerned. **LT. GOVERNOR OHS** stated he hopes so.

REP. HEDGES asked **LT. GOVERNOR OHS** in terms of CRP grazing, does the state have resources available to use prisoner work release or the National Guard to establish water routes for watering these livestock operations on CRP land. **LT. GOVERNOR OHS** stated he does not think so. If an emergency is declared then some of those things may be possible. This grazing needs to be done now.

SEN. McCARTHY asked **LT. GOVERNOR OHS** if there are any restrictions set on campgrounds. **LT. GOVERNOR OHS** stated not yet. **SEN. McCARTHY** stated the only request is that the campers would know of any restrictions in plenty of time. She asked if there have been any decisions made on irrigation district watering. **LT. GOVERNOR OHS** stated those decisions will be made on a district by district basis.

REP. BARRETT asked **LT. GOVERNOR OHS** if there are any drought management plans for wildlife from Fish, Wildlife and Parks. **LT. GOVERNOR OHS** stated he is not sure. **REP. BARRETT** asked, is the State looking at anything like an early hunt? **LT. GOVERNOR OHS** stated he does not think so at this point.

SEN. McCARTHY requested that a staff member attend the Drought Advisory Committee meetings to keep the EQC up to date.

LT. GOVERNOR OHS stated, if things continue to worsen then this is going to be a severe disaster for the state. He stated that he would be glad to come to the EQC meetings and give an update.

XII. DROUGHT INFORMATION

(Tape 3, Side A, Time 35.2)

Ms. Velda Welch, Montana Natural Resources Information System (NRIS), went over The Governor's Report On The Potential For Drought In Montana For 2001 (**Exhibit**

#5), a Precipitation map (**Exhibit #6**) and the Montana Drought Monitoring web site (**Exhibit #7**) and there was discussion.

(Tape 4, Side A, Time .1)

Ms. Nancy Schlepp, Montana Farm Bureau (MFB), gave a report on the I-Care-A-Ton project.

XIII. CONTINUATION OF ITEM IX ADOPTION OF WORK PLAN OPTIONS

(Tape 4, Side A, Time 1.8)

SEN. McCARTHY stated the Council has to wind up the work sheet and vote on the work plan.

MR. EVERTS went over the resource allocations.

REP. HARRIS moved to adopt the work plan.

SEN. McNUTT second that motion.

The Work Plan was adopted unanimously.

SEN. McCARTHY stated there will be three subcommittees, Energy, Coal Bed Methane and Oversight. She asked the Council members to write down their preferences of what committee they would like to work on. (there was a brief break while the subcommittee preferences were handed in).

There is a break in the tape until Time 14.6.

SEN. McCARTHY went over the subcommittee assignments (**Exhibit #8**).

XIV. ADOPTION OF INTERIM EQC CALENDAR

The Council adopted a calendar for the Interim.

XV. THE EQC'S RESPONSE TO THE GOVERNOR'S REQUEST ON THE FISH, WILDLIFE AND PARKS COMMISSION'S AUTHORITY TO ADOPT A POLICY AND PROMULGATE RULES TO REGULATE SOCIAL CONFLICTS ON THE BIG HOLE AND BEAVERHEAD RIVERS

(Tape 4, Side A, Time 20.0)

a. EQC Staff Review of the Issue – Larry Mitchell

MR. MITCHELL submitted written testimony regarding this matter ([Exhibit #9](#)) and a set of minutes on HB626 ([Exhibit #10](#)).

b. Legislative Services Division Legal Staff Opinion – Mr. Greg Petesch

(Tape 4, Side A, Time 29.2)

Mr. Greg Petesch stated he has concluded that the Department of Fish, Wildlife & Parks has abundant authority to regulate the recreational use of waters, particularly on rivers. He also concluded that the rule did not have to be adopted pursuant to the procedures described in the Administrative Procedure Act. The bill and the Governor's veto message were at best aids that could be used in constructing this. The intent of HB626 is not pertinent. His conclusion was that if he had a problem with anything in this area it would be with the rules adopted by the commission to implement the public petition process under stream access.

c. Public Comment

(Tape 4, Side A, Time 33.8)

Director Jeff Hagener, Fish Wildlife & Parks, stated that FWP believes they have the clear authority. He passed out two letters (**Exhibit #11**) and (**Exhibit #12**).

Mr. Thomas Anacher, FOAM, submitted written testimony (**Exhibit #13**).

(Tape 4, Side B, Time 16.4)

1. Questions

SEN. TESTER asked **Director Hagener** what statute gave the department the authority to make this rule? **Director Hagener** deferred the question to **Mr. Bob Lane, FWP** who stated the statute under which the department has the authority to adopt these kinds of recreational and fishing rules is 87-1-303(2). He read from that statute. **SEN. TESTER** asked then was it because of HB626 that public welfare was added and that is what gives FWP the ability to make these rules? **Mr. Lane** stated that is it exactly. **SEN. TESTER** asked then would it be correct to say FWP could not have made this rule without public welfare being added to the equation? **Mr. Lane** stated that is exactly correct.

SEN. TESTER asked **REP. HAL HARPER** was it your intent that the words “public welfare” added in goes beyond the jet boats and the water craft? **REP. HARPER** stated yes it does go beyond that and it was my intent. He talked about the history of the bill and it’s intent. He stated if these rules are not put into effect on these rivers it is not going to be a pleasant situation.

REP. HARRIS asked **Mr. Lane** if he agrees this rule must meet the three part criteria in order for the exception to be applicable? **Mr. Lane** stated yes he does. **REP. HARRIS** asked if the rule meets all three criteria, for example is it entirely implementable by signs? **Mr. Lane** stated he does not think that exception requires that it be entirely implementable by signs. Part of it is to put up signs but the department does much more

than that. **REP. HARRIS** asked **Mr. Lane** to focus on page 4, paragraph C, of the rule and asked him if he can implement that by signs. **Mr. Lane** stated that it will be indicated by signs. **REP. HARRIS** stated there may be different interpretations of the sign requirements. The substance of this exception is that the rule would be so simple that public notice by signs will take care of the notice requirement. **Mr. Lane** stated the actual language here is when the substance of the rules is indicated to the public by means of signs or signals.

REP. HARRIS asked **Mr. Anacher** if the department has met these three criteria. **Mr. Anacher** stated they have not.

MS. PAGE stated it strikes her that another thing is that the use of the exception under which the rules were made also says “seasonal nature of this” and it is pointed out that the restrictions for fishing only apply during the fishing season. Some of the restrictions, despite what the department says, affect the way an outfitter is able to conduct his/her business. This goes beyond regulating a seasonal aspect of river use and just fishing on these rivers. She asked **Mr. Anacher** and **Mr. Lane** to respond. **Mr. Lane** stated he thinks the rules do only two things, they regulate fishing and their primary regulation of these rules is in the busy summer months. Fishing rules don’t need signs but the department is putting up signs anyway. Fishing on these rivers is clearly a seasonal use. **Mr. Anacher** stated he would disagree with **Mr. Lane**. When an outfitter is precluded from the river it really hurts him/her. The fishing season is essentially the only time an outfitter can take people out. The fiscal impacts that are important in definition to significant public interest on this group of people are felt 12 months a year.

d. Continuation of Public Comment

Ms. Robin Cunningham, FOAM, stated this is purely not an issue of business or conservation. This is an issue of getting a process in place that can be used statewide, in an appropriate manner, with due process for all participating. There has been some concern over the rule exception. FOAM’s concern about the exception is that it allows FWP to dodge justification and intricate rationale with the rules they make. All of that is incorporated in the balance of MAPA. It is the idea of being able to make a rule, based on authority, however clear or unclear that authority is, and not have to comply with

justification and rationale and due process. If all of the instances and requirements of MAPA were used a lot of the individual applications of rule and situations where rules would be applied would not exist because they would not be justified. More important than all of this is the oversight that FOAM hopes this Council brings to MAPA and the ability for FOAM to work for the department in making legislation. He stated, "We are not trying to abandon the process, we are not trying to thwart it, we are trying to correct it."

Mr. Loren Flynn, Blackfoot River Recreation Steering Committee, stated the issues on the Big Hole and the Beaverhead were largely, if not exclusively, related to fishing, commercial outfitting and private use rather than a holistic look at river management which is causing some of the quandary that everyone is facing. That is something that future committees could look at. **(Tape 5, Side A, Time .1)** There are two issues here. The first is, was proper procedure followed on adopting the biennial rule on the Big Hole and the Beaverhead rivers. The second is, does FWP have the authority to regulate recreational use for public welfare for social conflict issues. He stated, those two issues really need to be separated. Let's figure out exactly what needs to be done to go forward and manage these rivers so that everyone can have a quality recreation experience.

Mr. Steve Luebeck, Big Hole Watershed Committee, stated, the Big Hole Watershed Committee believes that FWP does have the authority to regulate social conflicts and that the inclusion of the term "public welfare" gave them authority to resolve social issues. The vast majority of the issues contained in the rules of the Big Hole and Beaverhead rivers deal with floating activities in the pursuit of fishing. It is strictly not conflicts between but also conflicts among the various types of users. He concurred with FWP that the exception to MAPA does apply in this situation.

Mr. Tim Mulligan, FWP Commission, stated, the Commission, under the request of Governor Racicot, took on the task of trying to implement the intent of vetoed bill SB445. We, at no point in time, were using SB445 as a basis of authority. The biennial rule intent was to stem the growth of use on those rivers while the Commission pursued a management plan, which would be implemented in the longer term through the appropriate channels.

SEN. TOOLE asked **Mr. Cunningham** what his association would like to see done under the Administrative Procedures Act. Would he like to see it every year, every season, every river or some kind of procedural process that puts something in place that is going to be a one time procedure under the Administrative Procedures Act. **Mr. Cunningham** stated, in an ideal sense what he is after is a process; something that directly authorizes FWP to begin to deal with river recreational issues. Secondly, once the authority is clearly placed, to establish very specific criteria under which the process for developing rules on individual rivers goes. **SEN. TOOLE** asked **Mr. Cunningham** if he is looking for rule making, under MAPA, river by river. **Mr. Cunningham** stated, think it in terms of, if a group on a river chose to have rules developed for their river they should follow a process that has been established through legislation and then use all of the characteristics of MAPA before the rules are put in place. **SEN. TOOLE** asked **Mr. Cunningham** if he would see any changes to those rules on an annual basis or biennial. **Mr. Cunningham** stated if there are changes to be made on an annual basis those could go through a rule making process as well. **Mr. Lane** stated, these rules can be adopted under MAPA. All hunting, fishing and trapping regulations can be adopted under MAPA. FWP has the clear authority to do it in a fashion that doesn't require the strict procedures of MAPA, including notices to the Secretary of State and the Administrative Record Register. The legal fact of the matter is, there are two ways to adopt these rules. The fact that someone may prefer another way to adopt these rules doesn't mean they weren't adopted under a valid process. The biennial process is valid and so is the MAPA process.

MS. PAGE asked **Mr. Mulligan** if it would be his intent, with these seasonal rules, to renew them until a river management plan is adopted. **Mr. Mulligan** stated it would depend on what the situation on the river was at the time and the desires of the stakeholders. **MS. PAGE** stated, these are seasonal rules and yet was it discussed in these that the overall desire is to see the number of outfitters go down? **Mr. Mulligan** stated, not necessarily. This was not dreamed up by the Commission, this came from the stakeholders. **MS. PAGE** stated, as outfitters die the only mechanism to pass on a business would be an outfitter dying and passing it on to their immediate family. What if that outfitter does not have any immediate family? Does this seasonal rule have that built in? **Mr. Mulligan** stated, yes it does. The Commission struggled greatly with this issue and was not comfortable making a long term decision that could be applicable to

all rivers and waters in the state, dealing with how to regulate outfitters. It is so important to keep focus on what the intent of the biennial rule is, it is not intended to be a management plan.

Mr. Anacher thanked **Mr. Mulligan** for stating that the commission when they adopted the biennial rule, were following the intent of SB445. If MAPA was in place they would have had to express their justifications for what they were following and it would have been picked up at that time that SB445 cannot be utilized for the intent for this rule because it did not make it into law.

e. Council Direction

(Tape 5, Side A, Time 22.6)

MR. MITCHELL stated first and foremost the question of whether or not there is statutory authority for adopting these rules needs to be resolved. Secondly, if there is statutory authority for the rules then is this a rule that EQC has some authority to review? He referred the Council to the EQC Guide (**Exhibit #1**), section E which is MAPA. He went over that section. If this is not a rule subject to MAPA then do the rule review authorities of the EQC apply? If this is a MAPA rule or subject to MAPA review then there are a variety of options that the reviewing committee has available. He went over those options.

SEN. McCARTHY asked **Mr. Petesch** if the EQC has the authority for what is being asked. **Mr. Petesch** stated in his opinion this was a rule adopted under an exception to MAPA, therefore the ability of the committee to object under MAPA would not lie.

REP. HARRIS asked **Mr. Petesch** if the rule is improperly invoked would the Council not have oversight responsibilities? **Mr. Petesch** stated, if the Council's determination is that this does not fall within the exception to MAPA then the Council could object to the rule as being required to be adopted under MAPA and the appropriate procedure would be to petition the department to adopt the rule as that.

REP. HARRIS stated he doesn't have any problem with the substance of the rule. His concern is that there may be procedural violations with some portions of the rule.

REP. HARRIS moved to petition the Department to reexamine the rule for those portions of the rule that don't fit the exception and ask them to proceed with the full MAPA procedure.

REP. LINDEEN seconded the motion.

MR. EVERTS stated that he has excused himself from this process as he may have a conflict of interest. He stated, as far as process, there is an Oversight subcommittee and the timing and the decision in review of this could either be made now or at the next subcommittee meeting.

SEN. McCARTHY asked **REP. HARRIS** to clarify the issues that he wanted in his motion.

REP. HARRIS stated, his motion is for the Council to petition the Department to reexamine this rule and determine whether the rule, in full, meets within the exception to MAPA. The Council would specifically site the moratorium on outfitters as well as paragraph C on page 4, which is a limitation during peak periods.

SEN. TOOLE asked **REP. HARRIS** if it is his intent that the rule, as adopted, would stay in place until that is done. **REP. HARRIS** stated yes, he is not asking for suspension of the rule.

REP. BARRETT stated another part here is legislative intent. She stated that during the past legislative session **REP. STEVE GALLUS** had two bill markers put in place to address this issue, HB480 and HB481. The two bills did not pass the House Fish, Wildlife, and Parks Committee. The committee felt FWP did not have the authority to do that rule making and they were afraid of that being used to set a precedent statewide that this is how we will deal with user conflicts on rivers in Montana.

SEN. COLE stated, if this motion does not pass then the Council would still have the opportunity to take a look at this and study it and bring it back to the next meeting. For that reason **SEN. COLE** will not vote in favor of the motion.

REP. MOOD asked **REP. HARRIS** if his motion is asking FWP to analyze their activity and rationalize to the Council what applies or does not apply under MAPA. **REP. HARRIS** stated, that is correct.

MR. STRAUSE stated he does not see any harm that is going to come by passing this motion.

SEN. EKEGREN asked, if this motion is passed, then will we be asking the department to reevaluate their interpretation and if it does not pass, would the Oversight committee look at this? **SEN. McCARTHY** stated all the other options will still be open regardless of whether this motion passes or not.

SEN. McNUTT asked **REP. HARRIS** what is this going to accomplish if FWP has already said they did this right? **REP. HARRIS** stated if the Council sends FWP a fairly directed letter with a set of questions they are going to have to look at this very closely. He gave an example.

f. Roll Call Vote

(Tape 5, Side B , Time .1)

A Roll Call Vote was taken (**Attachment #6**) and the motion passed 9-7.

g. Other Action

SEN. COLE moved that the Oversight subcommittee take a broad look at this entire situation and come back to the next meeting with their findings.

SEN. McCARTHY stated, the subcommittee does not have time to do that before the next meeting so that would have to be delayed until the meeting after.

SEN. COLE stated he would delay that until the meeting after.

SEN. TESTER stated they could do a conference call. **SEN. McCARTHY** stated that would be fine. She asked **MR. MITCHELL** to set up a conference call for that.

REP. HARRIS asked, is there any other aspect of the rule that the Oversight subcommittee should be looking into. **SEN. COLE** stated he would let that be a decision of the subcommittee.

SEN. McCARTHY asked if the Council wishes to make any comments in the letter to the governor regarding this issue. There were no additional comments.

XVI. OTHER BUSINESS

(Tape 5, Side B, Time 5.3)

SEN. McCARTHY stated, subcommittee assignments have been made and the interim calendar has been adopted on a tentative basis, pending funding. She asked the Council to go over the Council Member's Guide to the EQC (**Exhibit #1**) before the September meeting. At that meeting all changes will be made and the book will be adopted.

MR. STRAUSE stated that he thinks it would be important to have something in the rules about teleconferences. **SEN. McCARTHY** stated that would be a very good suggestion. She stated, another thing that should be covered is how the teleconferences will be open to the public.

SEN. McCARTHY stated, upon adjournment the three subcommittees will meet for an organizational meeting.

XVII. ADJOURNMENT

(Tape 5, Side B, Time 8.2)

The meeting adjourned at 3:00 p.m.