



ENVIRONMENTAL QUALITY COUNCIL

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

GOVERNOR JUDY MARTZ
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**ENVIRONMENTAL QUALITY COUNCIL
Coal Bed Methane/Water Policy Subcommittee
September 10, 2001
FINAL MINUTES**

COUNCIL MEMBERS PRESENT

**SEN. MACK COLE, Chair
SEN. JON TESTER, Vice Chair
MR. TOM EBZERY**

**SEN. PETE EKEGREN
MS. JULIA PAGE
SEN. BEA McCARTHY**

STAFF MEMBERS PRESENT

**Ms. Mary Vandebosch
Ms. Krista Lee Evans**

Ms. Robyn Lund, Secretary

AGENDA

Attachment 1

VISITORS' LIST

Attachment 2

SUBCOMMITTEE ACTION

- Approve work plan

I WELCOME AND INTRODUCTION

SEN. COLE spoke briefly about the meeting agenda and what the Subcommittee hoped to accomplish at this meeting. See **Attachment 1**.

II WATER POLICY UPDATE

• Court cases and decisions related to water policy

MS. EVANS said that the Cape-France case was a groundwater issue outside of Bozeman. The Supreme Court said that it effected a citizen's right to a clean and healthful environment because the ground water was polluted with perchloroethylene (PCE). For the legal brief see **Attachment 3**. The next case is a negligence case related to an irrigation district. The case stemmed from an incident where a canal filled up with water in the middle of winter because the Clark Fork River had an ice jam and flooded. The irrigation district was sued by the land owners stating that the irrigation district was negligent in its maintenance of the canal; the Supreme court found for the irrigation district. See **Attachment 4** and **Attachment 5** for details.

MS. PAGE asked if the Subcommittee could get information about the court cases ahead of time in order to allow time for the members to read it before the meetings. MS. EVANS replied that the irrigation district case was decided on August 21, 2001 and the Cape-France case was decided on August 2, 2001, but that she would try to allow more time in the future.

• Rules (if requested by Subcommittee members)

MS. EVANS said that she had not received any requests for information with regard to the rules. She explained that each agency is statutorily required to keep a mailing list of people who are interested in the agency's new rule proposals or amendments. The Subcommittee members have been added to those lists. As members receive that information they are welcome to contact staff and make requests for more information.

SEN. TESTER asked if there were court cases pending. MS. EVANS said that the Supreme Court agenda has not yet been filled out on the Internet. It will depend on when the various cases fit in and when the Supreme Court plans to work on those cases. SEN. TESTER asked if it was correct that the members could expect some more cases. MS. EVANS said that they potentially could.

III DRAFT WORK PLAN

SEN. COLE introduced the draft work plan. Page 4 shows the Coal Bed Methane (CBM) tasks. Pages 8 and 9 shows the water policy tasks. Page 3 shows the goals of the Subcommittee relating to CBM, of which there are six. See **Attachment 6**.

SEN. COLE reminded the audience that the Subcommittee is looking for comments on the work plan. There is an EIS being worked on at this time and the Subcommittee doesn't have all the information on that statement. It is important to focus on the work plan and the tasks contained within.

SEN. TESTER commented that the members had paired down some tasks in order to get the work plan to where it is at now. He asked the audience to look at the tasks and keep the testimony rooted in the work plan.

MS. PAGE asked if there would be a discussion about the goals of the Subcommittee.

SEN. COLE said that the goals could be discussed either before or after the public comment.

SEN. TESTER asked if it was the Chair's intent to discuss the goals after the public comment. SEN. COLE said that he felt it would be better to have that discussion after the comment period.

- **Public comment**

Rebecca Watson, Fidelity, said that page 2, paragraph 3, under "Background Information," talked about no development on state land until the EIS is complete. She would like to see the fact that there is no development on federal land until the federal EIS is complete included in that statement.

Page 3 talks about analyzing water quality issues. There are six federal and state water studies and various other studies ongoing. Ms. Watson suggested that the Subcommittee may want to act as a clearinghouse for these studies.

Page 4 talks about coal bed natural gas tasks and the December meeting. She would like to see industry included in the discussion of options. The industry has been working on and looking at different alternative treatments for water management, such as reinjection, water treatment, use of the water for beneficial uses and surface water discharge. She would like to talk to the Subcommittee about that.

Ms. Watson also thought that there was some question throughout the draft work plan about whether the Subcommittee would send out draft reports. She would like to see those draft reports sent out to the public.

Art Hayes, Jr., Tongue River Water Users' Association, said that this summer proved that there is not an abundance of water in the system. 70 days of record low flows has just been set. Powder River is virtually dry. This shows him that we do not have the dilution power that we were supposed to have to make the CBM water flow away. It also shows that we are bringing solids, which have been locked into these geological formations, to the surface and depositing them on the surface. Water evaporates and the solids don't. There are a large number of reservoirs going in. He referred to **Attachment 7**, which talks about J.M. Huber's fields. Approximately 4.95 acre feet of water is going into the reservoirs per day and they are retaining .023 acre feet per day. This also tells Mr. Hayes that the water is not evaporating as fast as they think. It is going into the surface water and shallow aquifers. It is going to show up somewhere as an uncontrolled discharge. Mr. Hayes then referred to a Montana Tech report, see **Attachment 8**. This report shows that the shallow aquifers are rising. Further down in the spoils the aquifers are not rising; instead they have dropped dramatically. He asked the Subcommittee to remember that these are out-of-sight-out-of-mind discharges.

MS. PAGE asked if the water quality tests were done in more than one spot. **Mr. Hayes** replied that they test in three spots: at the state line, below the railroad bridge at Decker, and below the dam. They have seen a significant rise in SAR values. MS. PAGE asked what values had been found. **Mr. Hayes** replied that they are looking at .74 at the state line, .277 at the railroad bridge, and .90 below the reservoir.

SEN. COLE asked if there were some tasks that Mr. Hayes would like to see the Subcommittee change or add. **Mr. Hayes** had not had a chance to look at the tasks.

Wallace McRae, Rocker Six Cattle Company, said that page 3 of the draft work plan says, "The right to use and enjoy private property free of undue government regulation." The right to use and enjoy private property is pretty simple. A person should be able to enjoy property rights on their property as long as it doesn't affect other property owners and their rights. If one person exercises their property rights and dumps a bunch of water, leaving poor water in an aquifer that was intended for livestock, this affects the other property owners. Mr. McRae said that as the Council tours the mine and plant, the members will be extremely impressed with the results of re-vegetation and clean-up of the smoke coming from the stacks. Is that a reflection of corporate responsibility or of government regulation? Mr. McRae feels that there needs to be some regulation in order to level the playing field. The results depend on the company. There needs to be a level playing field where the irresponsible companies are not economically benefitted.

SEN. COLE asked if Mr. McRae had looked at the tasks of the Subcommittee. **Mr. McRae** replied that he had just received the draft work plan today and had not had time to look at it. He feels that there is an editorial slant to "free of undue government regulation." He was disappointed to see that in there.

Mark Fix, Northern Plains Resource Council, referred to page 4, item 1, where the work plan talks about water discharge. It would be good to look at the possibility of reinjection of water and water treatment. Under item 3, water quantity, he felt the Subcommittee should look at water rights. Other than that, Mr. Fix thought that the tasks are pretty much in-line.

SEN. COLE said that as the Subcommittee gets comments and as the EIS gets closer to completion, this is a time when the Subcommittee will be looking to see what things may or may not be important to look at in the 2003 Session.

Mr. Fix would like to see some suggestions from the public on possible legislation. SEN. COLE said that would be coming eventually, but that the Subcommittee is not at that point yet.

SEN. TESTER added that there will be legislation coming that the public would be able to comment on. He wanted to go back to Mr. Fix's comment about the water rights under item 3. What did Mr. Fix have in mind? **Mr. Fix** replied that all of the reservoirs that are being put in are withholding the natural flow of water that would come into the Tongue River, which is affecting all of the water rights of the people on the Tongue River. Close to Sheridan, Wy., Mr. Fix had seen three dams within a quarter mile of each other. If it rains, none of that water is going to make it to the Tongue River. Water rights are being impaired and people are having to buy water. The Yellowstone Compact designates 60% of the flow from Wyoming, but that water is not being received by those who it was designated for. There are dams in Wyoming which are possibly holding water for the city of Sheridan. This needs to be looked at across state lines as well as within the state.

Roger Muggli, T & Y Irrigation, agrees with both Mr. Fix and Mr. Hayes. The problem with the reservoirs containing the water is that there would have been more water in the Tongue River. The rain put out a significant amount of water into the reservoirs, but that water would have gone into the Tongue River without those reservoirs. He asked if Redstone Development, owner of many of the reservoirs, would be willing to pay compensation for water that had to be bought from the Northern Cheyenne in order to make up for that loss of water to the Tongue River.

There are serious ramifications to water rights holders down stream due to the number of reservoirs and the ability of those reservoirs to store water.

MR. EBZERY asked if Mr. Muggli felt that most of the water in those reservoirs was coming from CBM activity. **Mr. Muggli** said that a lot of the reservoirs were a long way from full until the rain, at which time twelve of the reservoirs ran over. Considering the amount of CBM water, with elevated SAR, in the reservoirs, now would be the time to let the water go because as time goes on the quality of that water is going to drop. Then water treatment and reinjection should be considered as an alternative to releases. MR. EBZERY asked, if Mr. Muggli would have Fidelity breach the dams this year, what happens if we have an event when there is concern that the Tongue River Dam may overflow. **Mr. Muggli** said that the storage dams weren't there before and the cubic feet per second (CSF) discharged through two major spillways, so he doubts that there would be a problem with the Tongue River Reservoir holding more than should come in there. MR. EBZERY asked, if the dams were not there, what would Mr. Muggli want to be done with the water. **Mr. Muggli** replied that he would want the water treated and released, or possibly reinjected. MR. EBZERY asked where the water should be stored while it was being treated. **Mr. Muggli** answered that the process that was shown at the Fish, Wildlife and Parks demonstration was a reverse osmosis process and it was an on-line process. MR. EBZERY asked, if the water is reinjected, is it correct that the water will never be used again. **Mr. Muggli** said no, not with a deep reinjection. MR. EBZERY asked then if Mr. Muggli was talking about a shallow reinjection. **Mr. Muggli** said that would be attainable at some point in time somewhere. DEQ in Wyoming has said that the plume from the reservoirs will eventually get back into the aquifer. However, with the clay soil in the area, he doesn't feel that it would be a reality for water from the coal mines to recharge the aquifer. He feels that the reservoirs are a poor excuse for what is a huge infraction on T & Y Irrigation, who has the oldest major water right on the Tongue River, having to suffer the loss of water from one major storm event that could have significantly helped them in storage water in their reservoir. That water never made it to them.

SEN. COLE asked if Mr. Muggli had any comments about the work plan. **Mr. Muggli** had no comment.

Nick Golder, Colstrip, commented that it is interesting that agriculture, which is the largest industry in the state, is being taken for granted. Tampering with a system that has made agriculture work can easily throw that system out of whack. This thing has only started and already there are some significant problems. It is easy to look at the economic aspects of the new development and forget the economic costs of the developments that are taken for granted. Agriculture is continuously taken for granted and under represented. He read from written testimony saying that over the next 22 years it is expected for the total contribution from CBM to the Montana revenue base would be 6.6 million dollars per year. Montana agriculture had about 2.4 billion dollars in income in 1999. We need to realize that tourism, which is our second biggest industry, is directly connected to agriculture. People don't come to see power lines, roads, pipes, and development; they come to see the agricultural land and the way of life that makes Montana the last best place. How much economic damage will CBM do to the economic mainstays in the state? We also need to keep in mind how much time will be needed for cleanup after the CBM mines are gone. There is a lot of quick money to be made with CBM, but the long-term costs to people, property, property rights, and state income might turn into more of a Frankenstein than we like to think about when we hear the cash register ringing to the CBM tune. We are taking a hit to what has made Montana what it is today. See **Attachment 9**.

SEN. COLE asked for Mr. Golder to take a look at the tasks and goals of the Subcommittee and get back to them with any feedback.

Rep. Keith Bales, HD 1, referred to page 4 of the work plan, saying he would like to have the Subcommittee become informed about both positive and negative impacts of CBM water discharge or water use. This should not be limited to irrigated lands because there might be some impacts to all land. Wyoming has a better watering system now than they did ten years ago, due to CBM. If water is treated and can be used for irrigation there would definitely be some positive impacts. The Subcommittee needs to look at both sides of the situation, not just the negative as so often happens. The Legislature revised the MEPA process and Rep. Bales thinks that part of the reason for this was to view how those laws will affect the MEPA process. The thought is that this ongoing EIS is a good way of looking at that. This is a joint EIS between the BLM and the state of Montana.

On page 3, Rep. Bales agrees with the private property rights and the undue restriction of state and federal government. That needs to be taken into account. There are times and circumstances where property rights of individuals do suffer, but in the same token, we don't want government to be intrusive and to totally dominate our lives. We do need freedom of as much government as possible to go forward.

MR. EBZERY said that the private property language comes right out of MEPA. Should that language be changed or does Rep. Bales feel that that reflects a balance? **Rep. Bales** thinks that it does reflect a balance and that it is very important. Part of the issue is the private property rights of the mineral rights owner, and the right that they have to develop their minerals. It is a balancing act of all the private property rights that are out there.

SEN. TESTER asked if the mineral rights could be in direct conflict with the surface rights as far as property rights. **Rep. Bales** replied that there are property rights on both sides of this issue. We do have laws in place for water quality, non-degradation and so on, that are designed to protect the property rights of those who are further away. HB 573 was passed in the last session and that will tend to protect the water rights of those people that may be adjacent to and are not directly influenced by the drilling and the water draw-down. There are laws in place, and there should be laws in place, to protect those property rights.

SEN. COLE commented that it is important that all property rights, both surface and sub-surface, are protected. **Rep. Bales** added that he had looked at proposing some legislation which would have defined in law what the surface owner's rights were, but decided that we were better not to have anything in law because oftentimes there are better deals made by surface owners before there is something in law. In the 1970's, when the coal boom happened, there were many surface damage agreements that were signed that were more advantageous to the surface owners before the federal government passed the Surface Owner Protection Act. By putting something in law, Rep. Bales was afraid that it would actually give the companies more leverage than they previously had. SEN. COLE said that the Subcommittee may want to look at things like full compensation with regard to eminent domain in their study to make sure that this is properly addressed.

Clint McRae, Rocker Six Cattle Company, said that one of the things that is important to consider is surface owner consent. He doesn't need CBM water to develop water for cattle at his ranch. We need to look at the long term and what will happen when the mine is gone.

Mr. McRae also commented that he would like to get drafts ahead of time so that he has time to digest it before coming to comment.

MS. VANDENBOSCH shared that when people sign in, if they put an asterisk next to their name they will be added to the mailing list. The way that draft publications are dealt with is that a postcard will be sent out that says it will be available on the Internet on this day and if you can't get it off the Internet, please contact the staff and they will send you a copy. This time a postcard was sent out in July saying that the draft work plan will be available on this day. Some people may not be on the mailing list because the EQC hasn't addressed this topic before.

David Davenport, Rosebud Conservation District, felt that there had been a mandate through the last Legislature that he doesn't think was fair to the conservation district. It said that if the land owner has a problem with water issues, they can come to the conservation district and apply for a \$50,000 reimbursement. The conservation district has to then decide if it was due to CBM or some other event. The other issue he spoke about was the immediate need for monitoring systems on many creeks. Water users are entitled to that. This monitoring needs to not just be voluntary, but rather state funded.

MR. EBZERY asked if there is any monitoring that is going on right now on any of the creeks. **Mr. Davenport** said that there is monitoring going on. The Tongue River Water Users have been in contact with the school. Colstrip School is doing some stuff, but it is done during school hours by kids. They are doing a good job, but there needs to be more.

MR. EBZERY asked if Fidelity is doing any monitoring. **Ms. Watson** said that they are. Fidelity is required to monitor their discharges at the Tongue River and submit those results to the DEQ.

SEN. TESTER asked what Fidelity is monitoring. **Ms. Watson** replied that they are monitoring the parameters that DEQ has put into Fidelity's water quality permit.

SEN. TESTER asked if Jack Stults, DNRC, knew what they were monitoring. **Mr. Stults** said that they are monitoring volume of the discharge and the quality of the discharge. Possibly, the concern that Mr. Davenport has would be more related to base-line monitoring of the existing conditions in the aquifers in the area and that isn't being adequately covered at this time.

SEN. TESTER asked Mr. Muggli if he had done any soil sampling on the ground that they are irrigating to find out if the salts are increasing in the soil. **Mr. Muggli** replied that they had, but they have heavy clay soil. Any increase in SAR will tie up in that clay soil and is a very difficult problem to deal with. SEN. TESTER asked if, through the testing, they have found an increase in the salts in the soil. **Mr. Muggli** said that it is creeping up all the time.

• ***Subcommittee discussion***

MS. VANDENBOSCH handed out a list of studies dealing with CBM, a soils technical report, and a water resources technical report. See **Attachments 10, 11, 12**.

MS. VANDENBOSCH said that she had received one written comment on the draft work plan from Wayne Van Voast. He thought that Task 3 should include learning about the hydrologic differences between Wyoming's part of the basin and Montana's part. Task 5 should include

learning about the monitoring program on the Tongue River quality that is in place in Montana. See **Attachment 13**.

MR. EBZERY referred to Rep. Bales' comments, on page 4, about insertion of positive and negative impacts, also irrigated and non-irrigated land, and Ms. Watson's suggestions of the insertion of industry experts on the CBM tasks, also the using the Subcommittee as a clearinghouse on the studies.

SEN. TESTER agrees with the positive and negative on irrigated and non-irrigated, but also thinks that we should have the same language as in task 1A that is in task 1C - "in Montana." This is because he keeps hearing that Montana aquifers are in a little different situation than those in Wyoming. The Subcommittee needs to make sure that they are dealing with Montana CBM issues and not Wyoming CBM issues in this particular case because it could be different.

MR. EBZERY had no problem with that.

MS. PAGE would like to see monitoring language included. SEN. COLE wanted to first vote on the current motion.

MS. VANDENBOSCH suggested that the Subcommittee add another task that they act as a clearinghouse for studies related to CBM development. Also, page 4, number 1, after "wells," add "in Montana." On A, after "irrigated," add "and non-irrigated," and "become informed about the positive and negative impacts of water discharge." The only other thing that was talked about was adding no development of federal land until completion of the EIS.

MS. EVANS said that MR. EBZERY had also mentioned, after "water discharge," adding "or water use." So A would say, "Become informed about positive and negative impacts of water discharge or water use."

Rep. Bales commented that not all water will be discharged. Some of it may be put to beneficial use.

MR. EBZERY asked about using the term all lands, wouldn't that be all encompassing?

MS. PAGE thought it is clearer, because irrigation is one of the issues with CBM water. It does cover all lands and gets at the point if it is said that way.

MS. VANDENBOSCH read through the new language. "Evaluate the management of water discharge from CBM wells in Montana; become informed about positive and negative impacts of water use and in association with CBM wells, including water effects on irrigated and non-irrigated land..."

MOTION/VOTE: MR. EBZERY moved the new language. Motion passed unanimously.

MS. PAGE would like to see the language about evaluate the adequacy of the monitoring scheme in place for produced water in association with CBM wells.

SEN. TESTER asked if MS. PAGE meant to include an evaluation of the aquifer. MS. PAGE replied that she was thinking more of surface water in terms of the monitoring, but certainly the

aquifers and how they react would be worth looking at. SEN. TESTER said that all the Subcommittee is doing is looking at the evaluation, not actually evaluating. MS. PAGE agreed. **Mr. Davenport** said that there is a monitoring system going on the groundwater surrounding the Tongue River and the surrounding aquifers. His biggest concern is if a big rain storm comes along and washed a bunch of this high salt water into the Tongue River, immediately someone needs to know.

MR. EBZERY asked if it was correct that the Subcommittee would not be starting something new with the monitoring. **Mr. Davenport** said that the study is being done to see if there is anything going on.

MR. EBZERY asked if the term “system” would be better than the term “scheme.” SEN. TESTER said that what he wanted is, if there are systems out there that are evaluating the surface waters and the aquifers, to see the information.

MS. VANDENBOSCH noted that Task 1 has been greatly increased in terms of work. She asked for more details about the new task. Is MS. PAGE saying evaluate the monitoring that is required, learn about studies that have been done, or evaluating the adequacy of the monitoring that is being done? It is important to distinguish because if she is talking about evaluating the adequacy of the monitoring there are a number of parameters and that will require the Subcommittee to learn about different chemical and things like that. MS. PAGE replied that, not only for events such as rain events that may cause the reservoirs to overflow, but also the ongoing production of CBM water, where is it going, is it going where it is supposed to be, how do we know that. Those are the things she would like to know about. MS. PAGE doesn't know that people should have confidence if the monitoring scheme is all self-monitoring by industry.

SEN. COLE said that he thinks where the Subcommittee should be coming at is taking a look at what is being done and, from that standpoint, to be able to take a look from a legislative standpoint whether this is adding to it or not adding to it. He would like to keep it within the current task rather than add a new one. The first thing is to take a look at what is being done and how it is being done.

MS. PAGE replied that she felt that was the intent of this. The language would say “become informed.” She would like to know what the monitoring system is for discharged water and aquifers.

SEN. TESTER said that with that will come who is doing the monitoring and to what extent the monitoring is being done.

MOTION/VOTE: MS. PAGE moved the new language. Motion passed unanimously.

MS. PAGE asked if the concept of water rights was going to be included in the task dealing with water quantity and uses.

SEN. TESTER said that he understands the things as Mr. Fix explained them. The problem of putting all of this in the work plan is that water rights is such a massive issue. He doesn't know if the Subcommittee can do it. What SEN. TESTER would like to do is, if issues of water rights come up in the staff's investigation, they would report it to the Subcommittee.

MR. EBZERY agrees with SEN. TESTER. The water rights issue is all encompassing.

MS. PAGE said that the motion would then be that as issues of water rights come up, they will be brought to the attention of the Subcommittee.

MOTION/VOTE: MS. PAGE moved the new language. Motion passed unanimously.

MOTION: MR. EBZERY moved for adoption of the CBM portion of the work plan, pages 1 through 6.

Discussion:

MS. PAGE referred to the goals portion of the work plan. The goal that refers to economic development, she would like to say it differently to ensure that CBM development is environmentally and socially sound. The cost for economic development is very broad and making sure that CBM development is environmentally and socially sound is focusing more on the Subcommittee's work. SEN. COLE asked if MS. PAGE wanted to take economically out. MS. PAGE said that she did. She thinks that the discussion of the Subcommittee is CBM development and the focus is making sure that it is environmentally and socially sound.

MOTION: MS. PAGE moved the new language.

Discussion:

MR. EBZERY thinks that both bases would be covered by leaving economic development in. He would resist taking that out.

MS. PAGE doesn't like that as an amendment. She thinks that the term CBM is much more to the point of the Subcommittee and its work.

SEN. COLE clarified that MS. PAGE would like to take economic development out of CBM. MS. PAGE said that her motion would be to change that to say, "Ensure that CBM development is environmentally and socially sound."

SEN. McCARTHY asked what was wrong with being economical or finding any economical development. MS. PAGE replied that the subject of the Subcommittee is CBM development, not just energy and development or economic development in general. She wanted to focus it more on CBM, not general economic development.

SEN. EKEGREN didn't think that the statement needed clarification.

SEN. TESTER called for the question.

VOTE: Motion failed by a roll call vote 5 to 1, with MS. PAGE voting yes. **Attachment 14.**

MOTION/VOTE: SEN. McCARTHY moved for approval of the CBM portion of the draft work plan. Motion passed unanimously.

MOTION/VOTE: SEN. TESTER moved for approval of the water policy portion of the draft work plan. Motion passed unanimously.

IV COAL BED METHANE

- ***Wyoming-Montana water quality agreement***

MS. VANDENBOSCH suggested that the litigation overview item be postponed due to the time constraints. She explained that Art Compton was listed to speak about the Wyoming-Montana water quality agreement, but was unable to be here. He had sent MS. VANDENBOSCH some information that she shared with the Subcommittee. Wyoming has agreed to maintain existing water quality at the Wyoming-Montana border in the Tongue, Powder and Little Powder Rivers for 18 months. The states have entered into a memorandum of cooperation on the Powder and Little Powder Rivers. The memorandum lays out how the existing water quality is declining. In the Powder the monthly low flow average for electrical conductivity during the 1990's; for the Little Powder, a 90% confidence interval applied to electrical conductivity and the sodium adsorption ratio for 1990's. If the threshold criteria are exceeded in Wyoming, we will query the monitoring and tracking system on about 30 breaches of rivers and tributaries to identify the source, whether CBM or some other source. If the source of water causing this exceedance is from CBM, Wyoming will adjust its permits to reduce the discharge. The states will begin talking about the Tongue River this fall.

Mark Fix commented that he had checked the monitoring system at the state line and has found that the electric conductivity is already exceeding the limit that is set up in this agreement.

- ***Status of environmental impact statement***

Tom Richmond, Montana Board of Oil and Gas Conservation, said that the joint federal and state EIS is making progress. The water quality technical report and the soils technical report are out on the DEQ web site. They may also have some of the other working documents posted there. Chapter 1 has gone through lead agency cooperative review. Chapter 2 is under lead agency review currently. Chapters 3 and 4 have also gone through lead agency review and Chapter 4 has gone out to the cooperating agencies. The cooperating agencies are the US EPA, the US Department of Energy, the Crow Tribe and the Bureau of Indian Affairs. The co-leads are BLM, Miles City Field Office, the DEQ and the Board of Oil and Gas Conservation.

The technical experts are gathering for a review of some water quality concerns that were discussed on the Wyoming-Montana agreement. They are looking for a way to characterize threshold values for the three rivers in the Powder River drainage. This will set some interim standards to allow the agencies to do a cumulative effects analysis on the potential number of wells that would be allowed to discharge.

The air quality model is being done by Argonne National Laboratories. It doesn't look like the model itself will be completed in time for the draft. The model will probably go into the final, but some of the analysis will go into the draft. The same with the water quantity modeling. Montana Bureau of Mines completed the 2D model in time for the draft. The 3D model will use hypothetical data from Hanging Woman Basin and will be available for the final. The draft is scheduled for November.

MR. EBZERY asked for the differences between the 2D and 3D models. **Mr. Richmond** replied that a 2D model looks at length and width and assumes that all of the aquifers are one big aquifer. A 2D model tends to over-predict impacts. A 3D model takes into account the movement between vertical aquifers, however large or small that might be. It tends to under-predict impacts. MR. EBZERY asked if there has been a resolution on the areas development and what is preferred. **Mr. Richmond** responded that about three weeks ago the lead agencies got together to do some preliminary work on picking a preferred alternative, and it is subject to some additional work that is done by the technical experts. At this point, all of the alternatives being analyzed are for full-field development. Some of them are more protective of existing resources than others. The choices of alternatives need to provide as broad a spectrum as possible. The preferred alternative will then go through each of those and leave out whichever aspects the lead agencies think are most appropriate. Mr. Richmond feels that it is safe to say that the beneficial use of water will be one of the preferred alternatives. One of the problems that they have is that they are working on a statewide EIS and people keep wanting to pull that back to site-specific. The agencies need to look at some way to pull everything in, so that they can use it on a statewide basis. His thought is that for every project, regardless of where it is, they should establish a regulatory framework that would require a project plan on a project-by-project basis. This would allow all of the regulatory agencies input into approving the project plan. Part of that project plan would be a water management plan.

SEN. TESTER asked if the technical reports on the DEQ web site come directly from the EIS. **Mr. Richmond** said that those will be appendixes to the EIS.

MS. PAGE asked if Chapters 1, 2, 3, and 4 are available for the Subcommittee to see and review. **Mr. Richmond** said that they are not published yet. Chapter 2 is where most of the discussion will take place about water and water alternatives and that is still a working draft.

SEN. COLE asked when Chapter 2 may be available. **Mr. Richmond** thought that the goal for Chapter 2 to go out for cooperative review is the week of September 18.

MR. EBZERY asked if they would be available on line when those go out for the agencies to review. **Mr. Richmond** said that the policy has been that, if it is an internal working draft for the lead agency review, nobody sees it until the lead agencies have at least corrected the big mistakes. When it goes out for cooperative review it is a semi-draft. His understanding is that DEQ has been putting that on its web site.

MS. PAGE made the statement that the Subcommittee is charged to review the adequacy of the EIS, but they don't have any information about it, except in terms of progress. The content and studies are not available.

MR. EBZERY said that his understanding is that their process is that the Subcommittee would develop a study plan along with the EIS, that the Subcommittee would be involved with the draft process. He doesn't think that he has ever seen a process where someone other than a cooperating agency was involved and the Subcommittee is not a cooperating agency.

SEN. TESTER said that the resolution speaks of oversight of the preparation of the EIS. After the EIS is out, the preparation is done. He feels that the Subcommittee needs to get the information before the EIS is in its final form. MR. EBZERY agrees with that. There will be a

comment period before the EIS is final. SEN. TESTER thought that the Subcommittee would have more involvement than just tweaking after public comment.

Rep. Bales said that the Subcommittee needs to be involved in how the process is working, how the relationships between the lead agencies, between the state and federal agencies is going and to make sure that it is working properly. As far as second guessing the lead agencies with things like collecting or analyzing data, that shouldn't be part of it. It is a balancing act, but he doesn't think that, at this point in time, it was intended that this group go in and be part of the working group that sits and writes the draft. The Subcommittee's purview is to identify problems with the process, which can then lead to possible legislation to improve the process and make it more workable in the future.

SEN. TESTER commented that if this group was to be overseeing the process, they need to have some information. They don't have any of that information. He doesn't want to end up with an EIS that the Subcommittee has had no input on, except for the comment period that everyone else has, and be expected to give it a blessing when they haven't seen the information ahead of time and they don't know how the process went because it will already be completed.

Rep. Bales would agree to a certain extent. Maybe it would be advantageous to ask for reports from the different agencies as to how the process is working. He doesn't know that it is this Subcommittee's purview to say, "I don't agree with your preferred alternative." The purview is to watch the process.

MS. VANDENBOSCH shared that Tom Richmond recently received an Energy 100 Bright Light award for Montana's participation in the development of a data management system.

SEN. COLE asked if Mr. Richmond would want to comment on some recent hearings.

Mr. Richmond said that J.M. Huber has proposed to drill some wells on Bozeman pass to look for CBM. There was a public meeting that was well and vocally attended. Later that week the MBOGC held a permit hearing, which was also well attended. The board approved the permit subject to about 10 stipulations that will be attached to the permit.

Mr. Richmond stated that, under the settlement agreement with Northern Plains Resource Council, they were to permit up to 200 exploratory CBM wells on a statewide basis that would allow for information to be gathered for the EIS and any future studies of CBM. MBOGC advertised for those and J.M. Huber applied for 18 permits. This is one of the 200 that is authorized under the settlement agreement and one of 18 that J.M. Huber requested.

The complication is that the part of Bozeman pass that will be affected has been subdivided and has in excess of 300 homes. It is in a rural zoning district, which requires an additional use permit from the county zoning board. That hearing will be held on September 13.

V **BUSINESS AND NEXT STEPS**

• *Agenda for next meeting*

MS. VANDENBOSCH gave the Subcommittee a list of lawsuits related to CBM litigation in Montana. See **Attachment 15**. She would propose that, after the cases are decided, they could be summarized.

SEN. McCARTHY thought that a brief summation would be helpful, or what their status is, considering that some may never be decided.

MR. EBZERY asked for clarification on the list. He understands that NPRC amended their complaint. **Ms. Watson** said that the number 8 lawsuit on the list was a lawsuit brought against Bureau of Land Management and Fidelity. It was a 90-page complaint that was amended down to a 25-page complaint. Nobody is going to answer that complaint until October. The number 9 lawsuit is a different lawsuit that was just filed recently concerning the Clean Water Act, Section 404, and construction. NPRC is alleging that Fidelity violated that section.

MS. VANDENBOSCH said that for a lot of these lawsuits it will take longer to summarize, but she will be happy to do that.

MS. VANDENBOSCH said that for the next meeting, on page 10 of the work plan, there is a list of issues. The Subcommittee needs to figure out where they are going to fit in information about the use of water produced in association with CBM. They already have a four-hour meeting planned.

MR. EBZERY commented that there is plenty to do in the December meeting. He suggested that the Subcommittee look at the water use issue at the February meeting.

MS. EVANS said that the other option is that the new agency rules and the review of the Supreme Court decisions, which would be primarily written updates, could be moved to February.

SEN. COLE said that the Subcommittee would keep the water issues in February.

VI ADJOURN

SEN. COLE adjourned the meeting at 10:54 a.m.

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