

**2003-2004 Environmental Quality Council
Work Plan**

October 21, 2003

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Information about the 2003-2004 Draft Work Plan

Introduction

This is the work plan for the Environmental Quality Council (EQC or Council) for the 2003-2004 interim. In this document you will find:

- ▼ An explanation of how the EQC plans its work.
- ▼ A description of potential work plan topics, the EQC's decision for addressing those topics, and work plan tasks.
- ▼ An interim time line.

How the EQC Plans its Work

During the legislative interim, the EQC typically focuses on two to four major study topics, while also maintaining oversight of programs and rule-making activities of the Montana Department of Natural Resources and Conservation (DNRC) ; the Montana Department of Environmental Quality (DEQ); and the Montana Department of Fish, Wildlife, and Parks (DFWP).

The Council selects study topics at the beginning of the interim. **The primary constraint limiting the EQC study agenda for the interim is the number of issues that can be effectively addressed within the available time and resources of the Council members and its staff.**

This *2003-2004 Work Plan* is really a **decision making tool** to help Council members work together efficiently to set priorities and decide how and where to spend the EQC's limited time and resources. The work plan becomes the blueprint for the 2003-2004 interim. Staff will then develop detailed draft work plans and timetables for each major study. A time line illustrates the overall schedule that these work plans will fit into once the meeting schedule and work plan are finalized is presented at the end of this document.

The work plan includes studies that were requested by legislators through study resolutions, suggested topics offered by Council members, and statutory mandates. The EQC's statutory mandates are broad. (See *A Council Member's Guide to the Environmental Quality Council*.)

Selected Work Plan Topics

Study Resolutions Assigned to EQC by Legislative Council

Water Management

Source/authority: HJR 4 (2003) Legislative Poll Ranking: 3rd
85-2-105, MCA

Background: As Montana and other Western states struggle with an existing drought and with recovering from an extended drought, the issues of water quantity and water management have risen to an increased level of awareness. Montana's citizens have learned how important it is to manage the state's water as efficiently as possible to try to avoid the impacts of drought. There are many thoughts and theories regarding water management and which practices are better suited to Montana. Many individuals feel that storage should be developed to keep water in Montana for a longer period of time, others feel that by being overly efficient with managing the state's water the state is actually losing more water to downstream states than is necessary. HJR 4 was presented to the Legislature as a way to gather information on existing water management practices and potential improvements on those practices. Specifically, the resolution requests that the EQC:

1. Evaluate the efficiency of water distribution systems.
2. Evaluate measures that promote the efficient use of water.
3. Evaluate return flow impacts.
4. Study water banking as a means to alleviate water shortages.
5. Investigate options for improving the supply and distribution of water in Montana, including the development of off-stream storage facilities.
6. Evaluate the water storage policy established in section 85-1-703, MCA.
7. Evaluate the effects of excessive fuel levels on federal and state timbered lands to determine the impacts of the use of available water by timber versus the amount of water released by a watershed in Montana watercourses.

HJR 4 specifically states that the study should be conducted with expansive public involvement and input. The issues that are provided above are quite extensive. In fact, each of the seven elements could be a study all its own. The EQC limited the issues that it will address in this study by using a prioritization process for the issues identified in the resolution and other issues that were identified during the October EQC meeting.

Council Action:

The EQC allocated 0.75 FTE for this topic. A water policy subcommittee was not appointed, therefore, HJR4 issues will be discussed and studied by the full council. The EQC members ranked and prioritized the elements that were identified in the resolution. The EQC also

expanded the scope of their work by deciding that they will research the water adjudication process as well. The EQC felt that completion of the adjudication process was fundamental to being able to address the other issues outlined in HJ4. How the EQC will address each of these issues is identified in the work plan tasks. For further information on this topic, contact the following staff person:

Krista Lee Evans -- 444-3957
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HJR 4 Work Plan Tasks

- X 1. Prepare bibliography of existing water policy information.
- Who: Staff and executive branch agencies
Time line: Ready for review at October 2003 EQC meeting.
- X 2. Discuss and make a decision on public input needs and methods for obtaining public input.
- Who: EQC members
Time line: October 2003 EQC meeting
- X 3. Identify primary water policy issues facing the state.
- Who: a. DNRC - per EQC request at the June 2003 meeting
b. Panel discussion of interested parties.
Time line: October 2003 EQC meeting.
- X 4. Discuss Montana water law and the impacts on water policy issues identified in HJ 4.
- a. Federal Reserved water rights
b. Adjudication process and time lines
c. Court decisions.
- Who: Staff, Panel Discussion, Montana Water Court if possible
Time line: October 2003 EQC Meeting
- X 5. Identify specific issues for further study.
- Who: Staff and subcommittee.
Time line: October 2003 EQC Meeting
6. Status of supply and distribution of water in Montana.
- a. Where does Montana stand now?
b. Do changes need to be made?
c. Existing stream storage facilities.
d. Costs associated with storage projects.
- Who: Staff, DNRC, EQC members
Time line: January 2004 EQC Meeting

- ___ 7. Compare water policy statutes regarding supply and distribution of water of states in the region.
- Who: Staff
Time line: January 2004 EQC Meeting
- ___ 8. Review and evaluate the water storage policy contained in 85-1-703, MCA.
- Who: Staff and EQC members
Time line: January 2004 EQC Meeting
- ___ 9. Accuracy in the water adjudication process
- a. What is accurate?
 - b. Are there shortfalls? If so, can they be fixed? how?
- Who: Staff, DNRC, other interested parties
Time line: January 2004 EQC Meeting
- ___ 10. Enforcement of water rights
- a. What water rights can be enforced?
 - b. How does enforcement work now?
 - c. Should this be changed? What role should the state play?
- Who: Staff, EQC members
Time line: January 2004 EQC Meeting
- ___ 11. Federal Reserved Water Rights and their relationship with the adjudication process.
- Who: Reserved Water Rights Compact Commission
Time line: January 2004 EQC Meeting
- ___ 12. Cooperate with DNRC in updating and promoting their Water Rights Handbook.
- Who: Staff, DNRC, EQC members
Time line: EQC review at January meeting
- ___ 13. Create a feedback form for water policy issues on the EQC website and news release to promote its use.
- Who: Staff
Time line: Prior to January meeting
- ___ 14. Water banking as a means to alleviate water shortages in Montana.
- a. Other state's activities
 - b. Actions in Montana
- Who: Staff and experts
Time line: March 2004 EQC Meeting
- ___ 15. Institutional objectors in water adjudication.
- a. Is there a role for an institutional objector on behalf of the state?
 - b. Review findings of the water adjudication advisory committee

Who: Staff, DNRC, Attorney General's Office
Time line: March 2004 EQC Meeting

- ___ 16. Paying for water adjudication.
 - a. User Fees?
 - b. Other state's methods.

Who: Staff, EQC members
Time line: March 2004 EQC Meeting.

- ___ 17. Surface water and ground water connectivity
 - a. Summary of issues
 - b. Review of rules
 - c. Other state's laws
 - d. Options for addressing in Montana

Who: Staff
Time line: March 2004 Meeting

- ___ 18. Capture and use of flood waters.
 - a. historical perspective
 - b. current science
 - c. discussion on feasibility, resources necessary, etc.

Who: Staff and experts
Time line: May 2004 meeting

- ___ 19. Water right permit and change process

Who: Staff, DNRC, interested parties
Time line: May 2004 meeting

Zortman and Landusky Water Quality

Source/authority: HJR 43 (2003) Legislative Poll Ranking: 8th

Background: The state DEQ, with some federal assistance, has assumed the operational and financial responsibility of reclaiming the Zortman and Landusky mine sites following the bankruptcy of Pegasus Gold Corporation. The DEQ is using mine reclamation and water quality bond funds provided by Pegasus' surety as well as some other funds from state and federal sources. A joint state and federal Environmental Impact Statement has been prepared for the reclamation of the site. Reclamation is in progress.

Generally, the DEQ believes that it will be able to reclaim the site with the available funds except that it is underfunded regarding the long term water treatment needs at the sites. The Fort Belknap Tribal Community and several other groups do not agree that there are sufficient funds to reclaim the site but do agree with the department that the funds available for water treatment are inadequate. A lawsuit has been filed to require the department to fund and implement a more complete reclamation of the sites. The primary environmental concern is whether or not surface and ground water quality will be adequately protected by ongoing and future reclamation efforts.

A considerable amount of reclamation information exists regarding the mine sites although gaps may exist that result in ongoing speculative arguments about the adequacy of the efforts. The Legislative Council has referred this study resolution to the EQC and has agreed with a staff suggestion that a white paper be prepared following a review of the available information.

Council Action:

The EQC allocated .30 FTE to this topic or approximately 820 hours of staff time. In addition to research on water quality issues at the Zortman-Landusky mine sites as requested in HJR 43, the council requested that a review of the current adequacy of mine reclamation bonds be included in this study. This information will be provided to the full EQC during the interim and be summarized in two staff white papers or brief reports; one for the Zortman-Landusky water quality issues and one for the metal mine bonding issue. Anticipated efforts are listed in the work plan tasks. For further information on this topic, contact the following staff person:

Larry D. Mitchell 444-1352
lamitchell@mt.gov

HJR 43/Bonding Issues Work Plan Tasks:

- X 1. Provide status and brief summary of Zortman-Landusky reclamation/water quality issues.

Who: DEQ Staff
Time line: October 2003 EQC meeting

- X 2. Status of metal mine bonding issues.

Who: DEQ Staff
Time line: October 2003 EQC meeting

3. Identification of water quality issues

Who: EQC Staff
Time line: January 2004 EQC meeting.

4. Panel discussion on the mine bonding process.

Who: Parties involved in the mine bonding process
Time line: January 2004 EQC Meeting

5. Review of Legislative Fiscal Division February 2000 report and subsequent legislative initiatives and current metal mine bonds.

Who: Legislative Fiscal

Who: EQC Staff
Time line: January 2004 EQC Meeting

6. Presentation of preliminary report on metal mine bonding status.

Who: EQC Staff
Time line: March 2004 EQC Meeting

- ___ 7. Present draft staff white paper on Zortman-Landusky water quality.
Who: EQC Staff
Time line: May 2004 EQC Meeting
- ___ 8. Review draft report on metal mine bonding.
Who: EQC Staff
Time line: May 2004 EQC Meeting
- ___ 9. Presentation of final white paper on Zortman-Landusky and final draft bonding report.
Who: EQC Staff
Time line: July 2004 meeting
- ___ 10. Approval of final white paper on Zortman-Landusky and final draft bonding report and any findings, recommendations, or legislation.
Who: EQC Members
Time line: September 2004 Meeting

State Share of Water Under the Yellowstone Compact

Source/authority: HJR 35 (2003) Legislative Poll Ranking: 10th
85-2-105, MCA

Background: Concern in Montana over the lack of sufficient water supplies in rivers that originate in Wyoming (Clarks Fork, Big Horn, Tongue, and Powder Rivers) and that flow into the Yellowstone River is the crux of the issue that generated this interim study resolution. The resolution requests the following:

- (1) investigate whether Montana is receiving its lawful share of water from the interstate tributaries pursuant to the Yellowstone River Compact; and
- (2) if the investigation determines that Montana is not receiving its lawful share of water, make recommendations regarding how to ensure that Montana receives its lawful share of water from the interstate tributaries pursuant to the Yellowstone River Compact.

The Legislative Branch does not have the financial or technical resources to fulfill the request described in subsection (1). It would cost the Legislative Services Division an estimated \$500,000 to \$1 million to hire a consultant to conduct the study as written. (The estimate assumes the study would be adequate if the state decided to pursue litigation to enforce the Compact.)

The DNRC has \$20,000 and professional staff to work on this effort this interim. The DNRC may have adequate financial and technical resources to begin negotiations with Wyoming if Wyoming agrees. Wyoming has begun negotiation with other states.

Council Action:

The EQC allocated 0.01 FTE for this topic. The Department of Natural Resources and Conservation (DNRC) committed to conducting this study with oversight and comment from the EQC. The EQC will receive progress reports on negotiations between Wyoming and Montana during the interim. The DNRC will report its findings, conclusions, and recommendations to the EQC prior to the conclusion of the interim. For further information on this topic, contact the following staff person:

Todd Everts -- 444-3747
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HJR 35 Work Plan Tasks

- ___ 1. Receive progress reports from DNRC on negotiations between Wyoming and Montana.

Who: DNRC Staff
Time line: Throughout the interim

- ___ 2. Decisions on findings and recommendations (if any).

Who: EQC Members
Time line: July 2004 EQC Meeting

- ___ 3. (fill in other tasks)

- ___ 4. (fill in other tasks)

Water Quantity/Ponds

Source/authority: HJR 40 (2003) Legislative Poll Ranking: 11th
85-2-105, MCA

Background: A concept similar to HJR 40 was introduced in the 2003 Legislature as HB 505. HB 505 was not passed by the Legislature and one of the reasons identified was a lack of time and knowledge to fully evaluate and discuss the issues associated with the development of ponds in Montana. HJR 40 was introduced in an effort have all of the various policy issues associated with pond development analyzed by an interim committee. HJR 40 contains extensive whereas clauses that summarize the issues. The whereas clauses state:

- Montana's scarce water resources are of vital importance to the state, its environment, and its citizens for existing and future prosperity;
- water has been appropriated from Montana's rivers and streams under the prior appropriation doctrine for more than 100 years;
- many river basins are now closed to new appropriations;
- continuing diversions from over-appropriated rivers and streams can adversely impact

- historic water users;
- the number of applications for new ponds has been increasing, even in closed basins;
- it is difficult to quantify the minimum or maximum amount of water needed for ponds for fish, wildlife, recreational, wetland, or aesthetic uses;
- impacts to a stream system resulting from a diversion of water from that stream for a pond can be much greater than the impacts resulting from an instream use of water that is nonconsumptive;
- Article IX, section 3 of the Montana Constitution provides that all water within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law; and
- Article IX, section 3 also provides that the Legislature shall provide for the administration, control, and regulation of water rights.

In order to evaluate the issues pointed out above, the resolution is very specific and requests that the appropriate interim committee:

1. evaluate whether or not water use for private ponds for fish, wildlife, recreational, wetland, or aesthetic uses should be considered a beneficial use of water under Montana law;
2. if private ponds for fish, wildlife, recreational, wetland, or aesthetic uses are to be considered beneficial uses, evaluate whether or not criteria or limits should be established to determine the size of a pond or the amount of water used for a pond that can be considered a beneficial use;
3. evaluate what measures, if any, are needed to address:
 - a. the proliferation of private ponds in Montana that are being constructed without first seeking or obtaining water rights; and
 - b. the proliferation of ponds associated with gravel mining operations.
4. examine the definition of "nonconsumptive use" and:
 - a. evaluate whether or not additional criteria should be established to determine whether or not a water use is a nonconsumptive use; and
 - b. identify what presumptions if any, should be applied to the term "nonconsumptive".
5. evaluate any other issues related to the use of water for private ponds for fish, wildlife, recreational, wetland, aesthetic, or gravel mining uses.

HJR 40 specifically states that the study should be conducted with public involvement and input. The issues that are provided above are very specific and the EQC can choose to follow the direction provided in the resolution or define its own goals and objectives with regard to this issue.

If a water policy subcommittee is appointed, the water quantity/ponds study could be addressed by that subcommittee or the full EQC. Whether or not a water policy subcommittee is appointed, the water quantity/ponds report could be incorporated into the water policy report.

Council Action:

The EQC leadership allocated .015 FTE or approximately 40 hours of staff time to this effort. It was perceived that HB 505 was widely supported and that its failure was not anticipated. The bill was approved by the House 85 to 8 but died in the Senate Natural Resources Committee. Prior to devoting resources to project, the council wanted to conduct a situation assessment of the interests and issues involved. For further information on this topic contact the following staff person:

HJR 40 Work Plan Tasks:

 X 1. Review history of legislation on this issue.

Who: EQC Staff
Time line: October 2003 EQC Meeting

 X 2. Provide EQC with information on issues and interests.

Who: EQC Staff
Time line: October 2003 EQC Meeting

 X 3. Make a decision of the next steps (if any) for this study.

Who: EQC Staff
Time line: October 2003 Meeting

 4. Without allocating additional effort, develop language that would address the issue of permitting ponds in closed basins that will satisfy all parties.

Who: EQC staff, agency staff, and interested persons.
Time line: none

EQC Water Policy Duties

Source/authority: 85-2-105, MCA.
Recommendations of 1997-98 EQC.

Background: The water policy duties of the EQC that are set forth in 85-2-105, MCA are paraphrased below.

1. Advise the Legislature on the **adequacy of Montana's water policy**.
2. Advise the Legislature on **important state, regional, national, and international developments** that affect Montana's water resources.
3. Oversee **policies and activities of executive branch agencies** and other state institutions that affect Montana's water resources.
4. Assist with **interagency coordination** related to Montana's water resources.
5. **Communicate with the public** about water policy and water resources.
6. Analyze and comment on the **State Water Plan**, when prepared by the Montana Department of Natural Resources and Conservation (DNRC).
7. Analyze and comment on the **Renewable Resource Grant and Loan Program** report.
8. Analyze and comment on **water related research** undertaken by state entities.
9. Analyze, verify and comment on the information in the **Water Information System of the Natural Resource Information System**.
10. Report to the Legislature.

Water quality monitoring, assessment and improvement (TMDL'S). The 1997-98 EQC recommended that the next EQC continue to provide oversight of the Montana Department of Environmental Quality's (DEQ) implementation of House Bill 546, a bill passed in 1997 that

addressed water quality monitoring, assessment and improvement, including total maximum daily loads, or TMDL's. U.S. District Court Judge Molloy has issued an order that requires the U.S. Environmental Protection Agency (EPA) to approve or establish TMDLs for each pollutant that impairs or threatens a water quality limited segment on the state's 1996 list of impaired and threatened water bodies by May 5, 2007. The DEQ is prohibited from issuing new permits or increasing permitted discharge for permittees to a water quality limited segment under the Montana Pollutant Discharge Elimination System (MPDES) permitting program until all necessary TMDLs are developed. The time lines affecting DEQ and the completion of TMDLs was extended to 2012 by House Bill 89 in the 2003 Legislature. House Bill 89 affects only the statutory completion date and does not affect the court mandated completion date of 2007.

Drought. If current conditions continue, the effects of drought will continue to be a grave concern in many parts of the state. Pursuant to section 2-15-3308, MCA, the Drought Advisory Committee chaired by the Lieutenant Governor is responsible for monitoring drought conditions, implementing the state drought plan, providing assistance to local drought advisory committees, and other duties related to drought.

Council Action:

A water policy subcommittee was not appointed this interim. Therefore, water policy issues will be discussed and studied by the full Council. The EQC made the following time allocations for issues that fall under the water policy topic:

Coal Bed Methane Water Issues: .065

Total Maximum Daily Loads (TMDLs): .11 FTE

The Department of Environmental Quality has agreed to update the EQC on TMDL status and progress in Montana. After receiving the updates, the EQC may choose to look into a specific TMDL in more depth.

The EQC feels that the best way to address Coal Bed Methane Water issues is to receive updates from the agencies that are involved in permitting Coal Bed Methane exploration and extraction activities.

A majority of the statutory water policy responsibilities of the EQC will be accomplished through the numerous water quality studies being conducted by the EQC this interim. The reports that the EQC is responsible for reviewing and commenting on will be presented throughout the interim.

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Coal Bed Methane (CBM) Work Plan Tasks

- ___ 1. Provide written summary of legal framework -- this was done in the 2001-2002 interim through presentations to the water policy subcommittee. The information is already available in the water policy report. Send the report out to EQC members to review.

Who: Staff

Time line: Send out 2001-2002 report prior to the January 2004 EQC meeting.

- ___ 2. Review of the primary issues in litigation related to CBM.

Who: Staff, Executive Branch Agencies, Appropriate attorneys

Time line: January 2004 EQC meeting

3. Discuss correlation between TMDLs and CBM water management.

Who: Staff, DEQ

Time line: January 2004 EQC meeting.

4. Update from Board of Oil and Gas on the number of wells permitted and current CBM activity.

Who: Board of Oil and Gas

Time line: January 2004 EQC Meeting

5. Panel discussion regarding nondegradation issues and other surface discharge issues between Wyoming and Montana.

Who: Staff, DEQ, Board of Oil and Gas, Experts

Time line: January 2004 EQC Meeting.

Total Maximum Daily Load (TMDL) Work Plan Tasks

- X 1. Present overview of the history of TMDL development in Montana

Who: Staff and DEQ

Time line: October 2003 EQC meeting.

- X 2. Review of the primary issues in court cases related to TMDLs.

Who: DEQ

Time line: October 2003 EQC meeting

- X 3. Discuss the 303(d) list, how it is established, the 1996 list, sufficient and credible data.

Who: DEQ

Time line: October 2003 EQC meeting.

- X 4. Present an overview of TMDL progress including the schedule that has been developed to meet the court imposed deadline.

Who: DEQ

Time line: October 2003 EQC Meeting

- X 5. Identify specific issues for further study.

Who: Staff and subcommittee.

Time line: October 2003 EQC Meeting

EQC Statutory Duties

Source/authority: Sections 75-1-201, 75-1-208, 75-1-314, 75-1-324, 2-15-1514, 2-15-1523, 50-60-801, 75-10-111, 75-10-913, 75-10-918, and 75-10-927, 77-2-301,

Background: Following the establishment of the EQC in 1971, the Legislature has occasionally authorized the Council to play a role in some specific programs or activities of state government. These directives are in addition to the more general oversight authorities for environmental programs and policies found in section 75-1-324, MCA. This general authority is arguably sufficient to address the specific programs and policies. However, and particularly for new environmental programs or policies, the Legislature has called upon the EQC to act as its liaison with the executive branch. In the past, the EQC has prioritized these activities as the need for specific oversight changes with interest, time, and circumstance. They are listed as follows:

- 75-1-201 and 75-1-208, MCA - Executive agencies are required to submit copies of environmental review documents prepared in accordance with the Montana Environmental Policy Act (MEPA) to the EQC. The EQC staff has created and maintains a database of MEPA documents.
- Effective in 2001, a project sponsor may appear before the EQC at a regularly scheduled meeting to discuss issues regarding an executive agency's environmental review of the project.
- 75-1-314, MCA - Three agencies of state government are required to report specific compliance and enforcement information to the EQC on a biennial basis. This is the result of a 1997 EQC interim study. The agencies have provided two reports to date. The 2001-2002 EQC requested that the agencies provide the third report covering fiscal years 2001, 2002 and 2003 during this next interim.
- 75-1-324, MCA - This section of law contains the general oversight and policy review and recommendation responsibilities of the EQC. Members are urged to review it in detail. The EQC is directed to gather information concerning conditions and trends in the quality of the environment; to review state programs and activities to enhance or maintain environmental quality; to conduct studies, analyze proposals, and make recommendations concerning environmental issues; and to generally act as the Legislature's source of information and advisor on environmental policy issues and direction.
- 2-15-1514, MCA requires participation of a Legislative Services Division employee on the natural resource data system advisory committee. This has typically been assigned to the EQC staff on an as needed basis.
- 2-15-1523, MCA requires the participation of a representative of the Legislative Services Division on the Groundwater Assessment Steering Committee. This has typically been assigned to the EQC staff on an as needed basis.
- 50-60-801, 90-4-1001, and 1003, 90-4-1010 and 1011 are all EQC duties related to the oversight and review of state energy policies. More detail is provided in the draft work plan narrative on Energy.
- 75-10-111, 75-10-913, 918, and 927, MCA all require EQC involvement and review of the state solid waste management plan and participation in the Megalandfill Siting Act review process. The DEQ has developed a state solid waste management plan that is under revision this year. There have been no megalandfill siting applications since the law was enacted in 1991.

- 77-2-301 *et. seq.* , MCA will include a new requirement authorized by HB 223 (2003 session) that the DNRC submit a report to the EQC by July 1, 2008 regarding the status of the state land banking program.
- 77-5-301 *et. seq.*, MCA is the Streamside Management Zone law. The statement of intent for the enabling legislation requires the DNRC to periodically evaluate and report on the implementation of the act to the EQC.
- 85-1-203, 85-2-105, and 85-2-436, MCA all relate to obligations of the EQC to participate in or receive and review information on water policy issues including water leasing information from the DFWP. More detail is provided in the draft work plan narrative on Water Policy.
- 85-1-621, MCA requires the DNRC to submit a biennial report to the EQC that describes the status of the Renewable Resource Grant and Loan Program financed with funds from the Resource Indemnity Trust.

Council Action:

The EQC created a seven member subcommittee on Agency Oversight to address topics assigned by the Council and to generally implement and review the EQC's specific statutory duties in light of the general duties outlined in Section 75-1-324, MCA. The EQC allocated a total of .32 FTE or approximately 870 staff hours for tasks involving EQC's statutory duties and general agency oversight responsibilities with a greater emphasis on agency oversight. The Council will fulfill its statutory obligations for energy and water issues through other efforts described in this work plan. For further information, refer to the section on **General Agency Oversight**.

Statutory Duties Work Plan Tasks: See the Subcommittee on Agency Oversight Work Plan.

EQC Educational Publications

Source/authority: 75-1-324, MCA.

Background: Under MEPA (75-1-324), the EQC has broad statutory authority and the EQC has historically used that authority to produce high quality, easy to understand, objective, nonpartisan, educational publications, in addition to the study reports that the EQC produces during any given interim. These educational publications are well regarded and are constantly requested by the general public, legislators, state and federal agencies, other states, and industry and conservation groups. Several EQC publications have received national awards. The EQC has produced the following educational publications:

Montana Index of Environmental Permits 2002, Thirteenth Edition

Explanation: This is the EQC's oldest and perhaps most requested publication. It provides a complete list of the permits and licenses needed to conduct activities that may affect the state's environment. The permit index lists the permits required, the permitting agencies, and the statutes and rules that regulate each permit. The permit index has been updated every interim for 26 years.

A Guide to Montana Water Regulation (produced in 1996 and updated in 2002)

Explanation: This publication is a primer that addresses water quality regulation in Montana. The impetus for producing this guide (which is one of the first educational primers that the EQC produced for a specific subject matter area) came from numerous requests from the general public and legislators for an easy to understand reference booklet on the complex area of water quality.

Wading into Montana Water Rights (produced in 1997)

Explanation: This publication is a primer on Montana's water right system. The EQC and the Montana University System Water Center teamed up to produce this publication that distills a very complex area of law and regulation into a very easy to understand and readable document.

A Guide to the Montana Environmental Policy Act (produced in 1998 and updated in 2002)

Explanation: The EQC was created by the Montana Environmental Policy Act (MEPA) in 1971. The EQC has historically been very active in MEPA implementation and oversight and in developing policy related to MEPA. This guide was produced by the EQC at the request of Montana citizens, legislators, agencies, and industry and conservation groups in order to provide an easy to understand reference guide on MEPA.

Eminent Domain in Montana (produced in 2001)

Explanation: This handbook was one of several products that the EQC produced as a result of its 1999-2001 interim study on eminent domain in Montana. This handbook was developed in order to help Montana Citizens better understand Montana's eminent domain laws.

The Electricity Law Handbook: A Montanan's Guide to Understanding Electricity Law (produced in 2002)

Explanation: This handbook was produced by the EQC last interim. The EQC felt that given the magnitude of the issues surrounding electricity and especially electricity deregulation in the state, that an educational publication was needed to help Montanans sort out the morass of laws that deal with electricity.

Understanding Electricity in Montana: A Guide to Electricity, Natural Gas and Coal Produced and Consumed in Montana (produced in 2002)

Explanation: This guide was produced by the DEQ energy staff for publication by the EQC last interim. It provides statistical and explanatory information on electricity supply, demand, and transmission and information on coal and natural gas supply and demand.

With some exceptions, the EQC's educational publications usually become outdated every interim as a result of legislative changes or administrative changes in the particular areas of law or rule that the publication addresses. Sometimes the updates require minimal time and effort, but some updates like the permit index require a more intensive effort.

Council Action:

The EQC allocated 0.21 FTE to this effort during the 2003-04 interim. The EQC decided to update the Montana Index of Environmental Permits and other publications as needed and directed by the Council. For further information on this topic, contact the following staff person:

Todd Everts -- 444-3747
teverts@mt.gov

Publications Work Plan Tasks:

___ 1. Update of Montana Index of Environmental Permits

Who: EQC Staff
Time line: January 2004

___ 2. Review of Montana Index of Environmental Permits

Who: EQC Members
Time line: January 2004

___ 3. (fill in other tasks)

___ 4. (fill in other tasks)

General Agency Oversight

Source/authority: 2-4-401- 412; 5-5-202, 75-1-324, MCA.

Background: Under MEPA (75-1-324), the EQC has broad statutory oversight authority and has historically used that authority to review agency activities on an issue by issue basis as the need arises. In 1999, 2001, and 2003, the Legislature further expanded and defined the EQC's oversight authority to include draft legislation review, administrative rule review, program evaluation, and monitoring the functions of the DEQ, DNRC, and the DFWP. The EQC's oversight of these agencies includes entities that are attached to these agencies.

The Legislature's actions in 1999, required a more systematic approach to agency oversight, especially in terms of administrative rule review. Pursuant to 2-4-401-412, MCA, the Council has the authority to request records; make recommendations for adoption, amendment, or rejection of a rule; institute, intervene in, or otherwise participate in rule-making proceedings; review the conduct of administrative proceedings; request a legislative poll; request an economic impact statement on a rule; or object to violation of authority for a rule.

The EQC is also required to review proposed draft legislation from each of the departments within its jurisdiction. At the end of the interim, the EQC schedules time to review this draft legislation.

Traditionally, the EQC has one or more agency oversight issues on the agenda for each meeting. The Council has also historically allocated the necessary resources to respond to issues as they arise. There are also a number of statutorily required agency reports that are scheduled for presentations before the Council. One of the more significant reports is the compliance and enforcement of environmental and natural resource laws report required pursuant to 75-1-314, MCA.

Council Action:

The EQC appointed an 8 person Agency Oversight subcommittee that is charged with carrying out many of the EQC's statutory duties as well as the EQC's general agency oversight responsibilities. Individual issues taken on by the subcommittee are subject to full EQC presentation, review, and comment. Specific efforts include the EQC's obligation to act as the rule review interim committee for the DEQ, the DNRC, and the DFWP. Other topics generally left as a responsibility of the subcommittee include a review of EQC's statutory duties, agency compliance and enforcement reporting, forest fire insurance issues in the rural/urban interface, possibly elk management, MEPA litigation, and other issues assigned to the subcommittee by the EQC. The subcommittee is charged with developing its own detailed work plan on these issues subject to Council approval. The EQC allocated a combined total of 0.32 FTE or approximately 870 hours for general agency oversight and implementing EQC's statutory duties. The resource emphasis on agency oversight was set at twice that of EQC statutory duties. For further information on this topic visit the following web site:

http://www.leg.mt.gov/css/lepo/2003_2004/subcommittees/agency_oversight/default.asp or contact the following staff person:

Larry Mitchell -- 444-1352
lamitchell@mt.gov

General Agency Oversight Work Plan Tasks: See the Subcommittee on Agency Oversight Work Plan.

Energy Policy Development

Source/authority: 90-4-1003, MCA.

Background: The Council may, as the need arises, maintain a continual process to develop the components of a comprehensive state energy policy. The Council expended a significant amount of effort during the 1993-94 interim in developing a state-wide energy policy statement. The 1995 Legislature enacted the EQC's recommendations. During the 1995-96 interim the EQC assigned a broad-based working group of stakeholders to make recommendations on transportation energy policy and on alternative transportation fuels. Again, the 1997 Legislature adopted the EQC's recommendations. The EQC monitored and received updates on electric industry restructuring during the 1997-98 and 1999-2000 interims. During the 2001-02 interim the EQC created a subcommittee that developed educational materials on the status of electricity in Montana and electricity law. EQC staff also provided staffing services to the Transition Advisory Committee on Electric Industry Restructuring during the 1997-98, 1999-2000, and 2001-2002 interims.

Council Action:

The EQC appointed a 5 person Energy subcommittee that is charged with studying biodiesel, hydrogen fuels, and alternative energy policy issues. The subcommittee is responsible for developing its own work plan on these issues. The EQC allocated 0.10 FTE to this effort during the 2003-04 interim. For further information on this topic visit the following website address: http://www.leg.mt.gov/css/lepo/2003_2004/subcommittees/energy_group/default.asp or contact the following staff person:

Todd Everts -- 444-3747
teverts@mt.gov

Energy Policy Work Plan Tasks: See the Energy Subcommittee Work Plan.

EQC Member Suggested Topics

Source/Authority: Section 75-1-324, MCA - General Oversight Authority

Background: On May 1, EQC staff sent a memo to each Council member soliciting topics of interest that might be reviewed by the EQC this interim. The responses are listed in the *Draft EQC Work Plan Decision Matrix* as "member defined issues" in the "Why is this a topic?" column. There is no narrative description for each topic. The EQC member that requested the topic is responsible for explaining the issue to the Council. A review of the matrix should indicate the nature of the request and provide a draft of tasks and a rough estimate of possible resource allocations for each topic. The Council will decide on whether to approve any or all of these items at the June organizational meeting.

Council Action:

Metal Mine bonding Study: combined with the Zortman-Landusky water quality study and evaluation.

Wildland Urban Interface Issues: requested that the Agency Oversight Subcommittee review this topic.

MEPA Issues: assigned to the Agency Oversight Subcommittee.

Takings Discussion: assigned to staff to facilitate a panel discussion and to potentially draft a handbook for legislators.

Alternative Energy: assigned to the Energy Subcommittee

2003-2004 Work Plan Time Line

General 2003-04 Interim Time Line:

[Note: This general time line is provided to give you an idea of the time line that each study will need to fit into in order to complete the work on time. The time line shows the last date for completion of certain items. Additional EQC and or subcommittee meetings may be scheduled if time and budget allow.]

June 16-17, 2003	EQC Meeting. Interim work plan prioritization and EQC organizational meeting. Selection of studies and topics.
October 8-9, 2003	EQC Meeting. Adoption of detailed work plans for each selected study or topic.
January 14-15, 2004	EQC Meeting.
March 9-10, 2004	EQC Meeting. If public comment is desired on an EQC report, the contents of the <i>draft</i> report should be determined by this date. [May be earlier for some studies.]
May 12-13, 2004	EQC Meeting. Last date to suggest revisions to a <i>draft</i> document if a 30 day public comment period is desired. Comments received from the public will be compiled by staff and distributed to the EQC 1-2 weeks before the July 22, 2002 meeting.
July 22-23, 2004	EQC Meeting. Decision on recommendations, any proposed legislation, final report contents.
September 13-14, 2004	EQC Meeting. Final approval of recommendations, any reports, proposed legislation. Selection of bill sponsors. Development of strategy. Review agency bill draft requests.
	Council interim work must be completed prior to September 15, 2004.

Specific 2003-04 Interim Time Line:

2003

Oct. 8 -9 EQC meeting

HJR 4: Water Management Study

- Review and discuss bibliography of water policy information.
- Identify areas where more information is needed.
- Discuss public input needs and methods for obtaining public input.
- Discuss when and where public input would be obtained.
- Identify primary water policy issues facing the state. (PANEL DISCUSSION)
- Montana water law and the impacts on water policy issues identified in HJ 4. (PANEL DISCUSSION)
- Identify specific issues for further study.

TMDLs

- Review and discuss history of TMDL development in Montana.
- Identify areas where more information is needed.
- Review primary issues in court cases related to TMDLs.
- Discuss 303(d) list, how it is established, the 1996 list vs. subsequent lists, sufficient/credible data requirements.
- Update on TMDL progress for 2003.
- Review the TMDL schedule developed as a result of the court imposed deadline.

HJR 40 Water Quantity and Ponds

- Review history of legislation.
- Provide EQC with information on issues and interests.
- Decide on future course of action.

HJR 43 Zortman and Landusky Water Quality- Mine Reclamation Bonds

- Status and brief summary of Zortman-Landusky reclamation/water quality issues
- Metal mine bonding issues - status and challenges
- Discuss and adopt work plan tasks

Alternative Energy

- Panel discussion on biodiesel

2004

Jan. 14 - 15 EQC Meeting

HJR 4: Water Management Study

- Review statutes and water policies from states in region regarding supply and distribution of water.
- Status of supply and distribution of water in Montana. (PANEL DISCUSSION)
- Supply and distribution of water and the relationship with federal policies and programs.
- Review and evaluate the water storage policy contained in 85-1-703, MCA.
- Accuracy in the water adjudication process.
- Enforcement of water rights.
- Federal Reserved water rights and their relationship with the adjudication process

- Review DNRC/EQC water rights handbook.
- Review website feedback form and discuss information received to date

CBM Issues

- Review primary issues in litigation related to CBM development.
- Review and discuss water policy report from 2001-2002 interim regarding CBM issues.
- Discuss correlation between TMDLs and CBM water management.
- Update from Board of Oil and Gas on number of wells permitted and current CBM activity.
- Panel discussion regarding Montana/Wyoming issues.

TMDLs

- Update on TMDL progress for 2004.
- Discussion regarding computer modeling as an approach to completing TMDLs.

HJR 43 Zortman and Landusky Water Quality- Mine Reclamation Bonds

- Identification of water quality issues
- Panel discussion of mine bonding process
- Legislative Fiscal Division Feb. 2000 report and subsequent legislative initiatives; current metal mine bonds.

Taking of Private Property Issues

- Panel Discussion

March 9 - 10 EQC Meeting

HJR 4: Water Management Study

- Review of progress related to specific issues identified in the work plan.
- Review work plan. Make changes if necessary.
- Discussion of feedback from web site form.
- Water banking as a means to alleviate water shortages in Montana.
- Institutional objectors in water adjudication.
- Paying for water adjudication.
- Surface water and ground water connectivity

TMDLs

- Update on TMDL progress for 2004.

HJR 43 Zortman and Landusky Water Quality- Mine Reclamation Bonds

- Preliminary report on metal mine bonding status

May 12 - 13 EQC meeting

HJR 4: Water Management Study

- Review of progress related to specific issues identified in the work plan.
- Review work plan. Make changes if necessary.
- Discussion of feedback from web site form.
- Discussion on the capture and use of flood waters.
- Water right permit and change process.
- Preliminary discussion on findings and conclusions.
- Identify specific areas of water policy statutes that need to be changed or modified (if any).
- Develop options (if any) for proposed legislation for decision at July meeting.

TMDLs

- Update on TMDL progress for 2004.

HJR 43 Zortman and Landusky Water Quality- Mine Reclamation Bonds

- Draft white paper on Zortman-Landusky water quality
- Draft report on bond status

July 22 - 23 EQC meeting

HJR 4: Water Management Study

- Decision on whether or not to recommend changes or additions to water policy statutes.
- Discussion and preliminary decision on findings and recommendations
- Review of draft report
- Receive update from DNRC on Renewable Resource Grant and Loan Program

CBM Issues:

- Decision on whether or not to recommend changes or additions to CBM statutes.
- Discussion and preliminary decision on findings and recommendations regarding CBM.
- Review of draft report

TMDLs

- Decision on whether or not to recommend changes or additions to TMDL statutes.
- Discussion and preliminary decision on findings and recommendations regarding TMDLs.
- Review of draft report

HJR 43 Zortman and Landusky Water Quality- Mine Reclamation Bonds

- Final draft white paper on Zortman-Landusky and final draft bonding report
- Initial decisions on findings and recommendations
- Decision on public review and comment

Agency Legislation Review

- Review Department of Fish, Wildlife, and Parks and Department of Natural Resources and Conservation Proposed Legislation

July 24 - Last dates to revise and distribute draft reports and concepts for

Aug. 22 proposed legislation for public review and comment, if desired

Aug. 29 Compile and distribute comments on draft documents to subcommittee members

Sept. 13-14 EQC meeting

- Final decision on content of proposed legislation, if any.
- Selection of bill sponsors. Development of strategy.
- Briefing on potential legislative proposals (if any) related to subcommittee topics.
- Approval of report on water policy issues and HJ4.
- Approval of report on CBM activities during the interim.
- Approval of report on TMDL activities during the interim.
- Approval of reports, findings, recommendations, and legislation if desired on Zortman/Landusky and Metal Mine Bonding.
- Review Department of Environmental Quality proposed legislation.