



# ENVIRONMENTAL QUALITY COUNCIL

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**GOVERNOR BRIAN SCHWEITZER**  
**DESIGNATED REPRESENTATIVE**  
MIKE VOLESKY

**HOUSE MEMBERS**  
NORMA BIXBY  
SUE DICKENSON  
JULIE FRENCH  
CAROL LAMBERT  
CHAS VINCENT  
CRAIG WITTE

**SENATE MEMBERS**  
BOB HAWKS  
CHRISTINE KAUFMANN  
DANIEL MCGEE  
JIM SHOCKLEY  
ROBERT STORY JR  
DAVID WANZENRIED

**PUBLIC MEMBERS**  
JOHN BRENDEN  
BRIAN CEBULL  
DIANE CONRADI  
KRIS KOK

**COUNCIL STAFF**  
TODD EVERTS, Lead Staff

## MINUTES

Approved September 13, 2007

Date: June 28, 2007

Room 102, State Capitol Building  
Helena, Montana

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.

**Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

### COMMITTEE MEMBERS PRESENT

SEN. BOB HAWKS  
SEN. CHRISTINE KAUFMANN  
SEN. DANIEL MCGEE  
SEN. JIM SHOCKLEY  
SEN. ROBERT STORY, JR.  
SEN. DAVID WANZENRIED

REP. NORMA BIXBY  
REP. SUE DICKENSON  
REP. JULIE FRENCH  
REP. CAROL LAMBERT  
REP. CHAS VINCENT  
REP. CRAIG WITTE  
MR. BRIAN CEBULL

MS. DIANE CONRADI  
MR. DOUG McRAE  
MR. MIKE VOLESKY

### **COMMITTEE MEMBERS ABSENT**

MR. JOHN BRENDEN

### **STAFF PRESENT**

TODD EVERTS, Lead Staff  
JOE KOLMAN, Environmental Research Analyst  
SONJA NOWAKOWSKI, Research Analyst  
CYNTHIA A. PETERSON, Committee Secretary

### **Visitors**

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

### **COMMITTEE ACTION**

- The EQC adopted the Minutes of the July 18, 2006, and September 11-12, 2006, EQC meetings.
- Sen. Wanzenried was elected Chairman of the Environmental Quality Council.
- Rep. Lambert was elected Vice Chairman of the Environmental Quality Council.

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

00:00:01 Sen. McGee called the Environmental Quality Council (EQC) to order at 9:03 a.m. The secretary noted the roll ([Attachment 3](#)).

### **AGENDA**

00:00:43 **ADMINISTRATIVE MATTERS**

The members and staff of the EQC introduced themselves.

00:12:01 **Adoption of EQC Minutes**

Sen. Shockley moved the EQC adopt the July 18, 2006, and September 11-12, 2006, Minutes. The motion carried unanimously by voice vote.

00:13:28 **EQC Budget Overview**

Mr. Everts explained that Krista Lee Evans is now lead staff for the Water Policy Interim Committee (WPIC). Ms. Nowakowski will be assisting with EQC responsibilities and providing

updates on the Energy and Telecommunications Interim Committee (ETIC). Mr. Everts acknowledged Maureen Theisen, Publications and Research Assistant, and explained her responsibilities with the Legislative Environmental Policy Office. Mr. Everts explained the current EQC has experienced a reduction in available FTEs.

Mr. Everts stated the EQC has a remaining budget of \$14,262.83, and the present meeting will be charged against that amount. The EQC has a budget of \$76,703 for the biennium, and approximately \$41,000 was estimated for travel, and approximately \$24,000 was estimated for personnel services. Mr. Everts explained the budget is based on the EQC holding eight meetings during the biennium.

Rep. Dickenson recalled that the HB 790 Subcommittee did not use all of its appropriation in the 2005-06 interim and wondered whether the EQC could use the leftover money. Mr. Everts explained the remaining money from the HB 790 Subcommittee and the EQC during the 2005-06 interim will revert back into the budget.

Sen. Story requested an explanation on the claim forms for travel reimbursement. Mr. Everts directed the EQC members to the EQC Handbook and the procedure for reimbursement listed in Appendix A-1 ([EXHIBIT 1](#)).

Rep. Witte wondered if the EQC's budget was at the same level as the previous interim. Mr. Everts responded the budget was increased slightly to cover the increase for mileage and per diem.

Mr. Volesky, Governor's Office, arrived and introduced himself to the EQC members.

## **COUNCIL AND STAFF RESPONSIBILITIES**

### **00:22:22 Purpose of the EQC/Statutory Duties - Mr. Everts**

Mr. Everts gave a power point presentation outlining the EQC and its responsibilities ([EXHIBIT 2](#)).

### **00:36:31 EQC Draft Rules and Procedures - Mr. Kolman**

Mr. Kolman directed the EQC members to the EQC Rules and Procedure 2005-06 ([EXHIBIT 3](#)). Mr. Kolman explained the EQC generally follows the rules of the Senate. Mr. Kolman reviewed the EQC Rules and Procedures.

### ***(Tape 1; Side B)***

- **Questions from the EQC**

Rep. Witte noted that the EQC rules provide a meeting can be convened upon 24-hour notice and suggested the ability to use proxies would be important. Sen. McGee responded he has never known a meeting to be called upon 24-hour notice, but agreed the EQC would need to make a decision regarding the use of proxies.

Sen. Shockley wondered why the proposed meetings are on Mondays and Tuesdays. Mr. Everts recalled Monday and Tuesday meetings were frequently held during the 2005-06 interim, and stated it would be up to the current EQC to decide on its meeting dates.

Sen. Story suggested reviewing the master calendar for all interim committees and thought that rearranging meeting dates could create conflicts.

Sen. Wanzenried noticed adoption of the EQC Rules is not an agenda item. Mr. Everts clarified the EQC has an opportunity to discuss proposed changes to rules from the last interim and will adopt final rules at the next meeting.

00:47:20      **EQC Decision-Making Process - Mr. Everts**

Mr. Everts explained the EQC is a bipartisan committee and traditionally the EQC decision-making process has been by a majority vote.

00:48:16      **EQC Subcommittee Formation Criteria - Mr. Kolman**

Mr. Kolman explained how the EQC can form subcommittees or work groups to address certain issues. Mr. Kolman emphasized that subcommittees operate much like the full EQC and need staff and a secretary for minutes. Work groups, however, are less formal and can also include members of the public. The subcommittee chairman reports to the full EQC. Mr. Kolman depicted both subcommittees and work groups as useful tools in tackling issues that are too demanding for the full EQC.

- **Questions from the EQC**

Sen. Wanzenried asked whether the HB 790 Subcommittee had its own appropriation. Mr. Kolman responded the HB 790 Subcommittee did have its own appropriation, but most subcommittees do not, and the funding for subcommittees usually comes out of the EQC's budget.

Sen. McGee explained the difference between subcommittees and the various funding sources for subcommittees.

Mr. Everts added usually subcommittees meet immediately prior to the full EQC to save on travel expenses. Mr. Everts cautioned against creating too many subcommittees due to the time constraints of legislative staff.

00:54:36      **Staff/Council Mission, Responsibilities, and Role - Mr. Everts**

Mr. Everts encouraged the EQC members to read the material they receive and to be fully engaged and well prepared for meetings. The EQC staffs' responsibility is to provide EQC members with the best information available. Mr. Everts reminded the EQC that staff is nonpartisan and that they take their obligations seriously.

Sen. Shockley suggested subcommittee meetings would land on Sundays if the EQC meets on Mondays and Tuesdays. Sen. McGee clarified the subcommittees would meet the first day and full EQC would meet the second day.

**(BREAK)**

## **AGENCY OVERVIEW PRESENTATIONS**

01:13:59      **Department of Environmental Quality**

Richard Opper, Director, Department of Environmental Quality (DEQ), provided the EQC with an update on DEQ's activities. Director Opper complimented EQC's staff. Director Opper identified climate change, development, energy, and coal bed methane (CBM) development as major issues for DEQ. Director Opper reported DEQ approved approximately 7,000 subdivision lots last year. In addition, Montana is being pressured into developing its energy resources, including alternative resources, as well as conventional energy development. Both development and energy have been good for Montana's economy. DEQ desires to ensure that development is appropriate and protective of Montana statutes. DEQ's mission is to protect, sustain, and improve a clean and healthful environment for Montana. DEQ's overall agency goals are better recruitment and retention of staff, improving efficiency in productivity, and developing better relations with the people they serve, primarily the regulated community. Director Opper believed DEQ was significantly under market a few years ago, but has now had pay increases, and the average DEQ employee now makes 94 percent of market. Director Opper reported DEQ is now doing better than average with employee retention. In terms of efficiency and productivity improvements, Director Opper explained DEQ's workload is always increasing, but without an increase in cash. Director Opper identified potential solutions as doing less, obtaining more funding resources, and looking at productivity and efficiency improvements. DEQ desires to ensure DEQ facilitates appropriate development rather than hinder development. Director Opper cited a need to get permits out as quickly and efficiently as possible while ensuring those permits provide the protection that they were designed to provide. Director Opper believed better relations with the regulated community will result in better compliance. DEQ has a budget of approximately \$60 million, approximately the same as FY 2007. Director Opper reported DEQ received \$1.8 million from legislature, which will focus on DEQ's process improvements to help the agency be more efficient. Another \$2 million was received to complete a remedial investigation and feasibility study in the upper Blackfoot mining complex, and \$2 million was received to continue to progress on the Burlington Northern/Livingston site. Director Opper identified CBM development and climate change as a huge issues facing Montana.

- **Questions from the EQC**

Sen. Shockley inquired about CBM development and asked Director Opper whether he has spoken with the geologist at MSU-Billings. Director Opper responded he had spoken with the geologist, but has not traveled to Billings to meet with him personally. Sen. Shockley identified the geologist as, knowledgeable, candid, and objective and encouraged Director Opper to meet with the geologist. Director Opper agreed to follow up with Sen. Shockley's suggestion.

Rep. Lambert asked whether there are any FTE vacancies in the DEQ. Director Opper responded DEQ's vacancy rate is 11.8 percent and state average is a little over 12 percent.

Sen. Wanzenried addressed the field position in Miles City that has been vacant for several years. Sen. Wanzenried reported he has heard DEQ is considering scaling back. Director Opper addressed the Miles City vacancy, and stated the Bureau of Land Management (BLM) has agreed to fund the position. Director Opper reported DEQ has recruited for that position four or

five times. Director Opper depicted the vacant position as critical, and that CBM development would be increasing. Director Opper agreed the positions are difficult to fill. Director Opper explained DEQ is considering doing something different such as hiring someone from the Northern Cheyenne Tribe, hiring an intern from Miles City Community College, or hiring someone from the Billings office. Director Opper stated DEQ has no intention of closing the Miles City office. Sen. Wanzenried wanted to know what the time table was for filling the position. Director Opper stated he hoped to have the position filled by the end of the calendar year. Director Opper reported that \$25,000 was appropriated to research the impacts of CBM water.

Sen. Story asked about the 11 percent vacancy and wondered how many of the vacancies were critical or were in technical areas. Director Opper responded there are quite a few environmental engineer positions and cited difficulty in filling those positions. Director Opper did not have statistics, but offered to obtain more information. Sen. Story asked whether improving pay and creating stability would solve problems with the regulated community. Sen. Story reported frustration among the regulated community from having to deal with different individuals all the time. Director Opper agreed creating stability within the DEQ would be helpful.

Sen. Hawks addressed water quality issues and CBM development and asked Director Opper whether he sees a rational interface between a work group from EQC and the current initiatives DEQ has in mind regarding water quality. Director Opper was certain there were many areas the EQC could address, and stated substantial research was being conducted. Director Opper thought it would be good for the DEQ and the EQC to work together on CBM issues. Sen. Hawks asked whether the DEQ could educate a subgroup of the EQC. Director Opper agreed that an educational process within the EQC could be accomplished.

***(Tape 2; Side A)***

Sen. Shockley recalled testimony that DEQ changes technicians frequently and that industry offered to subsidize DEQ to provide stability. Sen. Shockley summarized past testimony that DEQ is training people to move on to a better paying jobs. Director Opper offered to have staff give a presentation on the HJR 34 study at a future EQC meeting. Director Opper submitted a handout regarding HJR 34 ([EXHIBIT 4](#)).

Sen. Kaufman noted Director Opper's desire to get permits out in a timely manner, and commented that she sees a high percentage of staff devoted to permitting and a low percentage of staff designated for enforcement. Director Opper commented that he believes the percentages represent an appropriate mix. Director Opper reported FY 2007 figures indicate 43 percent of DEQ staff are designated for permitting, 21 percent are designated for planning, and 16 percent are in central management administrative, 16 percent are in remediation, and 3 percent are in enforcement. Director Opper believed the percentages correctly reflect the focus of DEQ because DEQ emphasizes permitting compliance and noted that DEQ conducts a substantial amount of compliance education and assistance.

Rep. French agreed it is difficult to find people who are willing work and live in eastern Montana.

(BREAK FOR TECHNICAL PROBLEMS)

Director Opper discussed DEQ's recruitment issues and reported DEQ is considering offering incentives such as flextime, telecommuting, reimbursement for furthering education, and expansion of internship programs. DEQ will also be opening a small office in Butte to work with interns at Montana Tech to handle oil and gas registration work.

01:49:58      **Department of Natural Resources and Conservation**

Mary Sexton, Director, Department of Natural Resources and Conservation (DNRC), provided an overview of DNRC's statutory duties and activities. Director Sexton identified the complexity of trust land funding as an issue that should be addressed. Director Sexton reported a settlement had been reached with Pacificorps. Director Sexton explained how that lawsuit determined the large hydro power users in the state have not been paying lease fees for over 100 years on the beds and parts of the rivers they use. DNRC will get a portion of Pacificorps' net revenues, and \$50,000 a year will go to common schools. Director Sexton identified water resources as a large department within DNRC. DNRC is in the process of deciding how to implement HB 831, the ground water/surface water bill. Director Sexton reported the transfer of water to Wyoming was not approved, and that the decision is being appealed by Fidelity. Director Sexton explained the difficulties in locating water specialists and that DNRC has entered into an agreement for a two-year program at Helena College of Technology (HCT) to train students to become water resource specialists. The Forestry and Fire Aviation Bureau is responsible for protecting five million acres of state and private forestry and watersheds. With increased funding from the 2005 Legislature, DNRC is building 18 new engines each year. DNRC also has forest practice regulation, including stream side management and voluntary best practices for forests in Montana. DNRC also administers the Hazard Fuel Reduction Law. DNRC also has a state nursery in Missoula. The Conservation Resource Development Division is a grants and loan program, and those applications have doubled. Director Sexton explained that division is undergoing an irrigation study to look at the economic feasibility study for irrigation. HB 6 also provided \$100,000 to look at the status of irrigated acres in Montana. DNRC is considering hiring a restoration/reclamation coordinator to provide coordination among state agencies. The Board of Oil and Gas continues to issue drilling permits, classify wells, establish spacing units, and inspect drilling production. The Reserved Water Rights Compact Commission has been very active and will sunset in 2009. Director Sexton identified development as an issue that touches all aspects of DNRC. In addition, wildland urban interface is very costly and will continue to be an issue. Director Sexton suggested there could be over 100,000 new homes built in western Montana alone. Water and conflicts between residential development water use, both quality and quantity, will continue to be an issue in Montana. Director Sexton reported the conversion of forest lands to residential development has impacted the timber base, wildland urban interface, and water resources. The loan and grant program is seeing more use for sewer and waste water applications. Director Sexton stated DNRC will be asking the EQC to review proposed rules for HB 831 and SB 51.

Mr. Cebull requested a breakdown for the \$65 million that was provided by the administration of the trust lands to schools. Director Sexton replied approximately \$30 million was from oil and gas revenues and offered to provide DNRC's annual report.

Sen. Story asked whether the Tongue River Ranch came off the property tax roles. Director Sexton replied it did and that DNRC sold approximately 11,000 acres, and there was some loss but not very much. Sen. Story asked about the St. Mary's diversion project and requested an update. Director Sexton commented they are working with the Blackfoot Compact, and DNRC is

in the process of performing the surveying. Sen. Story asked about the ramifications of Judge Honzel's decision and asked what DNRC would be doing about diversion structures. Director Sexton replied that DNRC has not done an analysis and survey but would be looking into doing a survey in the future.

Rep. Lambert had some inquires regarding the Red Water Planning District and requested time personally with Director Sexton.

Rep. Dickenson recalled the term "suppression" regarding fire suppression needed to be defined and asked whether the term now has a definition. Director Sexton recalled DNRC worked on updating the statutes but did not specifically recall whether suppression had been defined.

Rep. Vincent asked about SB 293 and whether DNRC is looking at finding resources to help address urban interface on federal lands. Director Sexton agreed DNRC does have legal resources it can utilize.

02:11:39      **Department of Fish, Wildlife, and Parks**

Jeff Hagener, Director, Department of Fish, Wildlife, and Parks (FWP), submitted Montana Fish, Wildlife & Parks Annual Report 2006 (**EXHIBIT 5**). Director Hagener reported FWP has not experienced difficulties in filling vacant positions. Director Hagener stated 75 percent of FWP employees are located in the field. Director Hagener identified access to streams at bridges as FWP's largest issue. Director Hagener stated Montana is currently the place of choice to buy real estate. Cabellas Trophy Properties has moved into Montana and is selling trophy properties with exclusive hunting and recreational opportunities. FWP is concerned about this practice since people will not allow access to those properties making it difficult for FWP to manage the animals on those properties. FWP is working on an Access Montana Program for the purchase of more fishing access and park sites to provide access to large areas of land that FWP currently does not have access to. Director Hagener reported wolf delisting is underway, and FWP is in the process of rolling over wolves into a management process similar to the way all other animals are managed, and that hunting and trapping seasons for the wolf could occur next fall. Director Hagener suggested it is appropriate to move forward with delisting for Montana and Idaho, even if Wyoming's plan is unacceptable. Director Hagener did not believe delisting of the wolf in Montana should be halted because of Wyoming. In addition, grizzly bears have been delisted in the Yellowstone ecosystem which resulted in the filing of several lawsuits. The Northern Continental Divide ecosystem is in the process of determining the number of bears in that ecosystem and indications are that there are more bears in that area than originally projected. Director Hagener also identified property development and energy development as having impacts on habitat and wildlife populations.

**(Tape 2; Side B)**

Director Hagener addressed the deer management plan for Helena. There is an estimated 500-600 deer within the City of Helena and the management plan will reduce the population in half by using sharpshooters. The FWP Commission will review the plan and determine whether the plan is feasible. Billings and Missoula are also working on deer management plans. Director Hagener identified urban interface as causing the need for deer management plans.



Director Hagener would like to see energy development done in a manner that recognizes the fish and wildlife resources and habitat. Director Hagener identified split estates and multiple owners in oil and gas and CBM development as causing great difficulties. Director Hagener stated the Fort Peck Hatchery has been effective but is currently operating using only the warm water stamp funds and is raising Walleye and Chinook Salmon. Director Hagener identified the primary issue as what fish can be raised in that hatchery and suggested there is a need to utilize other sources of funds and that legislation is needed to allow the use of other funds. Director Hagener stated the hatchery sits empty for the majority of the year. FWP is looking at increasing enforcement, and that there are large-scale poaching operations in Montana. In addressing the bison hunt, Director Hagener reported the quota has been increased to 140 bison, but only 31 licensed hunters harvested bison, and an additional 27 bison were harvested by the Nez Perce Tribe. Those numbers represented all the bison that came out of Yellowstone National Park. Director Hagener explained the Confederated Salish and Kootenai Tribe and Nez Perce Tribe clearly have documented treaty rights to hunt in Montana in their usual and accustomed places. It also appears the Shoshone Bannock also has a treaty that provides rights to hunt and fish on their ancestral grounds. FWP has also been conducting a quarantine facility for bison calves, so they can be used to augment or establish other herds.

- **Questions from the EQC**

Rep. Witte asked whether there are other tribes outside of Montana that are interested in acquiring bison. Director Hagener replied he has heard from at least a dozen tribes around the United States that have expressed an interest in taking some of Montana's bison. Rep. Witte asked if there was an opportunity to make a profit. Director Hagener replied Montana has never sold wildlife, but has utilized trade agreements in the past. Rep. Witte asked whether legislation would be required to allow the sale of bison. Director Hagener did not have the answer.

Sen. Story addressed FWP's goal to protect wildlife and how that goal interrelates with energy development in Montana. Sen. Story requested an opportunity for EQC to discuss the issue with FWP and industry representatives. Director Hagener added FWP's role is to be the stewards of Montana's fish and wildlife resources, and needs to get involved further.

## **PUBLIC COMMENT**

There was no public comment offered.

### **02:34:27 ELECTION OF EQC CHAIR AND VICE CHAIR**

Sen. McGee informed the EQC that he was holding a proxy for Mr. Brenden.

Sen. Story noted some interim committees have a standard rotation for the chairman, but that the EQC does not have a regular rotation. Sen. Story pointed out the chairman of an interim committee does not really have a lot of authority.

Sen. Story nominated Sen. Wanzenried as Chairman of the EQC. Sen. Hawks moved the nominations for Chairman of the EQC be closed. Sen. Wanzenried was appointed Chairman of the EQC by acclamation.

Rep. Witte nominated Rep. Lambert as Vice Chairman of the EQC.

Rep. Bixby nominated Rep. Dickenson as Vice Chairman of the EQC.

Sen. Story pointed out the Chairmanship and the Vice Chairmanship are required by statute to be split between the two political parties. Rep. Bixby withdrew her motion.

Sen. Shockley moved that nominations for Vice Chairman of the EQC be closed. Rep. Lambert was appointed Vice Chairman of the EQC by acclamation.

### **(LUNCH BREAK)**

00:00:02 Sen. Wanzenried assumed chairmanship of the EQC and addressed administrative matters.

### **WATER ADJUDICATION PROCESS OVERSIGHT**

00:01:12 **Department of Natural Resources and Conservation update - Director Sexton**

Mary Sexton, Director, DNRC, submitted DNRC's Report to EQC, HB 22 Adjudication Progress and provided the EQC members with an update on the progress of water adjudication ([EXHIBIT 6](#)).

- **Questions from the EQC**

Sen. McGee noted the reference to the use of geocodes and asked whether the counties had their own geocodes that were separate and distinct from the geocodes used by the state. Director Sexton agreed that was the case and referred the question to Jim Gilman, Adjudication Program Manager, DNRC. Mr. Gilman responded that it was his understanding that the geocodes originated from the counties and are passed on to the Department of Revenue. Mr. Gilman stated Montana is the only state that has a central record system for geocoding all the ownership in the state.

Sen. Shockley asked how long it takes for a preliminary decree to ripen into a final decree. Mr. Gilman suggested Sen. Shockley's question should be directed to Judge Lobel. Sen. Shockley asked what the fee money would be used for. Mr. Gilman explained the fee money, in conjunction with the \$2 million from the Governor, has been spent for start up expenses and personnel. Sen. Shockley suggested the honest people who paid their bills are shafted while the people who did not pay their bills come out ahead. Director Sexton responded that DNRC is following up with those individuals who did not pay. Sen. Shockley asked whether consideration could be given to giving the money back after two years to individuals who apply. Director Sexton explained DNRC had already spent the money it collected and additional money that is collected will be used to continue to fund the adjudication process.

### ***(Tape 3; Side A)***

Mike Volesky, recalled Rep. Campbell carried the administration's bill to refund the fee money, but that there was not much interest from the Legislature.

Ms. Conradi asked whether the Realty Transfer Certificate was being revised so a water right is transferred by default. Director Sexton clarified there will be an automatic transfer or a certificate will have to be filed with the Clerk and Recorder saying the water right is either being split or retained.

Sen. Story clarified the water right will transfer with the sale of land and that the notification process is what has changed because when the Realty Transfer Certificate is filed, unless there is something else filed, the ownership of the water right will change in DNRC's database. Director Sexton agreed. Sen. Story added the law has not changed regarding the water right since the right has always transferred unless it was severed, but the notification issue is what was changed.

#### 00:23:37 **Montana Water Court Update - Judge Lobel**

Judge Lobel provided an update via telephonic conference call. Judge Lobel reported the water court is experiencing clerical staffing difficulties since Bozeman currently has a 1.5 percent unemployment rate. Judge Lobel reported the water court is doing better with hiring and retaining water masters and training is going very well.

A decree was issued in the Big Hole River Basin and the water court held two public meetings in Divide and Wisdom. Judge Lobel expects several water users to request a 90-day extension of the Big Hole's October 3, 2007, objection deadline. Most of the ongoing basin adjudication work is concentrated in ten active basins. DNRC anticipates delivering four more summary reports to the court within the next few months. The court will then conduct a careful review of the summary reports before authorizing the issuance of a decree. Judge Lobel anticipates the water court may be able to turn around summary reports quicker in the future. Once the DNRC receives approval to send out notices of the decree, it takes approximately two years for water court staff to resolve objections to water right claims because of procedural and processing requirements. Judge Lobel hopes to finish up three or four active basins within the next two years.

Judge Lobel reported on the ongoing controversy before the Montana Supreme Court regarding the issue of unauthorized practice of law before the water court. Judge Lobel submitted two sets of rules for the Supreme Court to consider. The first set authorized immediate family members to represent family farm corporations and other family-owned business entities. The second set of proposed rules would provide water users a period of time to settle objections and issue remarks without an attorney. FWP, DNRC, and the Attorney General's Office have proposed a competing set of rules which would require the water court to follow the same practice of law rules as state district courts. Judge Lobel expects to hear from the Supreme Court within the next month or two.

- **Questions from the EQC**

Sen. Shockley wondered how long it takes for a preliminary decree to ripen into a final decree. Judge Lobel responded the water court has only issued six final decrees and has been asked to reopen the examination of those decrees. Judge Lobel explained how decrees need to be tested to determine whether there are any unforeseen problems. There are several procedural and statutory opportunities for the decreed rights to be amended.

Sen. Shockley explained he was never optimistic about the water adjudication process but was impressed with the speed the water court did the west side of the Bitterroot. Sen. Shockley asked when the final decree would be issued. Judge Lobel responded final decrees for the West Bitterroot should be issued in two or three years, but that his preference would be to not issue final decrees for quite awhile.

Sen. Shockley recalled the process started on Tongue River in the 70s and is still current. Judge Lobel explained the process began in the Powder River drainage and that when SB 76 passed in 1979, the water court issued final decrees.

Rep. Lambert recalled the adjudication process on the Tongue River and asked whether the Legislature had requested that the final decrees be readdressed. Judge Lobel's responded the Legislature had directed him to readdress the Tongue River drainage to give better notice of the existence of water rights. Rep. Lambert stated she did not understand why the Legislature wanted to re-examine the water rights. Judge Lobel recalled water users throughout the Yellowstone River drainage were not noticed and there was concern that some water users may not have been properly notified.

Sen. Story asked whether one of the impediments to issuing final decrees was the reserved water rights. Judge Lobel identified reserved water rights as a major impediment.

00:41:10      **DROUGHT UPDATE—Jesse Aber**

Jesse Aber, DNRC, Governor's Drought Advisory Committee, gave a power point presentation on Montana's drought and submitted a Montana Drought Status Update to the EQC (**EXHIBIT 7**). Mr. Aber provided a history of the Governor's Drought Advisory Committee. Mr. Aber will provide the EQC with a drought update at the next EQC meeting.

- **Questions from the EQC**

There were no questions from the EQC members.

**(Tape 3; Side B)**

## **INTRODUCTION AND REVIEW OF INTERIM WORK PLAN OPTIONS**

01:03:25      **Work Plan Option Matrix Introduction - Todd Everts**

Rep. Lambert commented the EQC's priority had already been established by HJR 57. Mr. Everts referred the EQC to the 2007-08 Environmental Quality Council Revised Draft Work Plan (**EXHIBIT 8**) and the Environmental Quality Council's Work Plan Process (**EXHIBIT 9**). Mr. Everts explained the purpose and history behind the Work Plan Process and directed the EQC to the Work Plan Decision Matrix (**EXHIBIT 10**). Mr. Everts emphasized that all interim committees must complete their work by September 15 of the year prior to the legislative session. The Work Plan also provides interim committees with the ability to work within their allotted resources in terms of staff time. Mr. Everts explained the Work Plan is a guide and is flexible as issues emerge. Mr. Everts explained the importance of providing opportunities for public comment during the interim. Mr. Everts cautioned the EQC members to be mindful of their own time and whether they are over-committing. Mr. Everts explained another key

consideration is the EQC's budget and noted many EQC members will be traveling great distances to attend meetings. Mr. Everts stated he would be better able to calculate the EQC's travel costs after the first meeting. Mr. Everts pointed out that some items on the matrix are required by statute and, therefore, taking no action on those items would not be an option.

01:18:22      **Review of Individual Work Plan Elements - Joe Kolman**

Mr. Kolman reviewed the history and requirements of HJR 57, which is a study resolution directing the EQC to look at the feasibility of establishing conservation easements on state lands. Mr. Kolman explained the different options the EQC has with regard to HJR 57 and noted all the options include legislation.

- **Questions from the EQC**

Rep. Witte was curious what would happen if an amount less than the designated 1.83 FTE was utilized. Mr. Everts responded that had never happened in the past and that staff time would be allocated to other interim committees.

Ms. Conradi asked how the decision is made to allocate the FTEs and noted more FTEs were available last year. Mr. Everts explained he makes the decision and explained his calculation is based on a number of variables. If the EQC decided it needed more FTEs, the EQC could submit a request to Legislative Council.

Sen. Wanzenried noted the range of FTE allocations was from .3 FTE down to none. Mr. Kolman confirmed the numbers on the matrix are correct and the numbers range from .15 FTE to none. Mr. Everts confirmed the EQC could decide not to do a study.

Sen. Shockley expressed confusion since HJR 57 was a directive from the Legislature to do a study. Mr. Everts responded it was the prerogative of the EQC to not do the study, but that had only happened once in the past.

Rep. Dickenson voiced her support for doing the study requested by HJR 57 since it was the only legislatively-directed study before the EQC for the 2007-08 interim. Rep. Dickenson identified the issue as important and supported choosing Option A on the matrix.

Sen. McGee stated he had devised a proposal for allocating the 1.83 FTEs, which included 0.15 for conservation easements; 0.15 for water policy; 0.64 for EQC statutory duties; 0.3 for agency oversight; 0.05 for carry forward EQC recommendations on improving the superfund process; 0.04 for EQC publications; and 0.5 to study climate change.

Sen. Shockley pointed out there is a distinction to be made and that the FTE numbers actually relate more to the amount of paperwork generated and not the amount of information provided to the EQC. Mr. Everts responded the FTE amounts relate to the amount of activity taking place and the amount of information being generated for the committee to make a decision. Sen. Shockley referenced HJR 57 and pointed out the only distinction between Options A, B, and C is that Option C does not include a panel discussion. Mr. Kolman agreed with Sen. Shockley's observation. Sen. Shockley commented no one reads most of the paperwork anyway, and that the legislation is the most important thing.

Sen. Story depicted the HJR 57 study as an important topic and believed all the aspects of the issue should be carefully considered.

Rep. Lambert agreed the EQC should devote a great deal of time to HJR 57.

Rep. Dickenson stated an interim report consists of more hours, but that an interim report has more information and seems to have more standing. Rep. Dickenson recalled an instance where a white paper on CBM water was circulated but was never read, so no one ever benefitted from the work that was performed.

Sen. Shockley respectfully disagreed and wondered what the purpose would be of producing a larger, more detailed interim report if nobody read the white paper.

Ms. Conradi asked Mr. Everts to describe the difference between an interim report and a white paper. Mr. Everts described past interim reports and the process entailed in developing and producing an interim report. Interim reports usually contain recommendations and are approved by the whole EQC. A white paper usually consists of a compilation of staff research. The intended audience is the Legislature and the public. Mr. Everts stated while the outcomes of both white papers and interim reports can be the same, the question is how much time does the full EQC want to invest to produce the report versus directing staff to conduct the research. Rep. French agreed HJR 57 is an important issue that affects different areas of Montana in different ways and should be an interim report.

Chairman Wanzenried asked if there were other ideas from EQC members that were not listed on the matrix. Mr. Everts encouraged EQC members to raise issues they would like to discuss. Chairman Wanzenried asked for clarification that a large amount of FTE could be allocated and made up by reductions in other areas. Mr. Everts agreed and noted the time allotments on the matrix were only estimates.

***(Tape 4; Side A)***

As a new member, Ms. Conradi thought it would be beneficial to go through each item on the matrix.

Mr. Everts reviewed the individual statutory duties contained in Exhibit 10 and provided a history of EQC activities and interaction with other interim committees such as the newly-created Water Policy Interim Committee (WPIC).

• **Questions from the EQC**

Sen. Hawks asked about providing the EQC members with a work group orientation about water-quality issues related to CBM development and asked whether the issue could be rolled into the .15 FTE for water policy. Mr. Everts offered to provide Sen. Hawks and the other EQC members with information regarding water-quality issues and those issues that are affected by CBM development.

Ms. Conradi asked whether there was a way to bring forward statutory duties that would specifically not be addressed by the WPIC. Mr. Everts responded the overlap with the WPIC would be on the rulemaking process in HB 831. Mr. Everts believed the end goal should be to

not duplicate the WPIC's work while still providing the EQC and the WPIC with the needed information. Mr. Everts stated that goal had been considered in his FTE calculation.

Sen. Shockley asked how many years it had been since CBM was dealt with by the EQC. Mr. Everts recalled CBM development issues began in 2000-01. Mr. Everts offered to provide information on CBM development that has been generated over time. Sen. Shockley did not believe that effort was necessary, but acknowledged no one on the current EQC had heard any of the previous testimony, and that the science had changed significantly. Sen. Shockley wondered whether a working group would be sufficient and more economical if the idea was to gain knowledge and monitor the CBM development situation. Mr. Everts responded if the full EQC has an interest, the information could be provided to the full EQC. Mr. Everts added that if there are specific directives, then creating a subcommittee or work group would be appropriate. Sen. Story clarified that a work group reports to a subcommittee, which then reports to the full EQC. Sen. Story cautioned against appointing a work group that does not contain legislators.

Sen. McGee provided an explanation on the use of subcommittees and work groups. Sen. McGee identified subcommittees as being more efficient since subcommittees consist of a smaller group. In addition, subcommittees are useful in identifying significant issues.

Sen. Story recalled the work of the HB 22 Subcommittee on Water Adjudication and the Subcommittee's ability to travel and include much more public involvement. Sen. Story stated it would be necessary for the EQC to have an Agency Oversight Subcommittee.

Sen. McGee recalled in the 1999-2000 interim a joint subcommittee addressed eminent domain and that the proposed legislation that evolved from that subcommittee was good.

Rep. Dickenson commented that during the last interim a substantial amount of work was done by subcommittees and believed the full EQC did not receive all the information since it was summarized in a subcommittee report. Rep. Dickenson stated her desire to have the EQC do as much as possible as a whole committee.

Sen. Story noted the EQC receives reports on controversial legislation and suggested some of EQC's statutory duties are older and should be weeded out. Mr. Everts agreed the EQC could review the statutory mandates to determine whether they are still relevant.

Sen. Hawks asked Mr. Everts what he would consider to be a good statutory minimum for oversight involvement. Mr. Everts responded the level varies from interim to interim. Mr. Everts explained EQC has placed a lot of emphasis on agency oversight and less emphasis on general oversight. Mr. Everts noted that interest in administrative rule review has increased over time.

In addressing agency oversight, Sen. Shockley commented many people had complaints, and that the agency was wrong in many instances. Sen. Shockley believed people should be given an opportunity to voice their complaints in the presence of the agency.

Rep. French asked Sen. Shockley if the Agency Oversight Subcommittee acted as a mediator. Sen. Shockley did not view the role of the Agency Oversight Subcommittee as that of a mediator, but suggested it may have impacted the rule-making process.

Rep. Vincent asked if there was a list of rules the EQC may be looking at during the interim. Mr. Everts explained as staff attorney, he reviews the proposed rules, and reports to the EQC or the Agency Oversight Subcommittee. Mr. Everts asked the EQC to decide to what extent it would like him to report.

**(Tape 4; Side B)**

Sen. Shockley reiterated that several of EQC's past publications had won national awards from the National Council of State Legislators. Sen. Shockley acknowledged the importance of EQC's publications. Sen. Shockley expressed his dismay with the superfund process and DEQ. Ms. Conradi stated she routinely refers people to EQC reports and publications.

02:26:57      **MONTANA CLIMATE CHANGE ADVISORY COMMITTEE - Rep. Dickenson**

Rep. Dickenson is a member of the Montana Climate Change Advisory Committee (MCCAC) and provided background information. Rep. Dickenson was concerned that the MCCAC's recommendations will go to the Governor by a consensus of the committee members and not be presented to the legislators or the public. Rep. Dickenson provided background information on the MCCAC and outlined the MCCAC's current efforts. Rep. Dickenson would like to see the EQC weigh in on the MCCAC's recommendations.

- **Questions from the EQC**

Sen. McGee believed he needed to learn more about global warming and stated he would like to be better educated and listen to both sides of the argument.

Mr. Cebull stated it was his impression that the MCCAC did not debate whether global warming was human caused. Mr. Cebull did not believe the EQC should engage in the debate on global warming. Rep. Dickenson explained the MCCAC's focus was on how agricultural practices could be modified and whether there are economic development opportunities. Rep. Dickenson suggested the amount of time allocated to global warming by the EQC should be .04 FTE. Mr. Cebull stated the EQC should focus on studying the MCCAC's report, tracking the results, and provide oversight.

Sen. Shockley agreed the topic is important and noted the public's high interest in global warming. Sen. Shockley thought EQC could provide a forum for the public to comment. Sen. Shockley stated the issue of global warming may not be as cut and dry as it is portrayed.

Rep. Vincent agreed it would be important to provide a venue for public comment and that it would be beneficial to hear both sides of the issue.

Rep. Witte wondered why the EQC would want to restudy the issue of global warming. Rep. Witte noted the MCCAC will release a final climate report this summer and may possibly suggest legislation.

Rep. French asked whether public comment would be allowed under any of the proposed options in the matrix. Mr. Everts clarified public comment could be taken under any agenda item.



Sen. Story suggested a panel discussion would take less time, and that the EQC should consider staff time versus committee time.

02:51:49      **UPDATE ON ACTIVITIES OF THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE—Sonja Lee Nowakowski**

Sonja Nowakowski, Legislative Research Analyst, provided an update on the activities of the ETIC and stated although the ETIC had not been assigned any studies, one of its members had requested a study on carbon sequestration. The requested study would be similar to the study required by HB 828 (Rep. Olson, 2007 Legislative Session), which did not complete the legislative process by the time the Senate adjourned. In addition, the study would also include components of HB 25, the energy re-regulation bill, which also addressed carbon sequestration issues. Ms. Nowakowski emphasized that at this point, the study is a member-suggested topic before the ETIC, and the ETIC had not made any decisions.

Sen. Shockley wondered how much it would cost to add one day to the proposed EQC schedule to address the issue of climate change. Mr. Everts responded it would not take much for staff time, and stated he would have a better estimate of the travel costs after the EQC's first meeting. Mr. Everts noted the EQC has two-day meetings scheduled, so it could decide to devote one of those days to the issue of climate change.

Rep. Dickenson provided an explanation of the proposed topic Update on Environmental Public Health Tracking Project. Rep. Dickenson stated she would like to hear a report on the program and suggested it could be an agenda item. Rep. Dickenson also suggested EQC could coordinate efforts with the Children, Families, Health and Human Services Interim Committee.

Rep. Witte noted the issues with the Kalispell Pole site in Flathead County and asked whether an EQC work group could help resolve the issues with this site. Mr. Everts explained the DEQ has a quarterly reporting requirement to provide the EQC with an update on the Kalispell Pole site.

Ms. Conradi suggested that the impacts that result from converting forest lands or privately held lands that provide public access would be an appropriate EQC agenda item. Ms. Conradi identified possible subjects as:

- the conversion of forest lands to residential use
- the impacts on the timber base
- impacts on water and sewer systems
- wildland/urban interface
- access to public lands
- access to streams
- management of wildlife habitat

***(Tape 5; Side A)***

Sen. Story would like a report from DEQ about the Leaking Underground Storage Tank Program and the problems that program has encountered. Sen. Story would liked to see the issue on EQC's agenda. Rep. Lambert recalled she recently read an article stating the federal government was also going to revisit the problem with underground storage tanks.

Rep. French asked if there had ever been a study done on school trust lands overall and how they are addressed by the state. Rep. French explained 25 percent of Daniels County consists of school trust land, and that sometimes the rules and regulations have a negative impact on farming and grazing. Mr. Everts could not recall a legislative study ever being conducted but offered to obtain more information from DNRC.

Mr. Kolman recalled reading an extensive report on real estate which encompassed the uses of various state lands.

Sen. Hawks added SB 75, which died in House Appropriations, was supposed to simplify the internal accounting structure for school trust land. Sen. Hawks stated SB 75 would have required looking at the management and use issues of school trust lands.

#### **PUBLIC COMMENT**

There was no public comment offered.

#### **ADJOURNMENT**

There being no further business to come before the EQC, the meeting adjourned at 4:11 p.m.