



ENVIRONMENTAL QUALITY COUNCIL

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JULIE FRENCH
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CARY SMITH
FRANKE WILMER

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RICK RIPLEY
JIM SHOCKLEY
MITCH TROPILA
BRUCE TUTVEDT

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JEFF PATTISON
BRIAN CEBULL
DIANE CONRADI
MARY FITZPATRICK

COUNCIL STAFF
JOE KOLMAN, Research Analyst
SONJA NOWAKOWSKI, Research Analyst
HOPE STOCKWELL, Research Analyst
CYNTHIA PETERSON, Secretary
TODD EVERTS, Legislative Environmental Analyst

MINUTES

Approved May 6, 2010

March 4, 2010

Room 172
State Capitol Building

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 Meeting Audio. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

REP. CHAS VINCENT, Chair
SEN. BRADLEY MAXON HAMLETT, Vice Chair
SEN. JIM KEANE
SEN. RICK RIPLEY
SEN. MITCH TROPILA
SEN. BRUCE TUTVEDT
REP. SUE DICKENSON
REP. JULIE FRENCH
REP. MIKE MILBURN
REP. CARY SMITH
REP. FRANKE WILMER
MS. DIANE CONRADI (via telephone)
MS. MARY FITZPATRICK
MR. MIKE VOLESKY

COMMITTEE MEMBERS EXCUSED

MR. BRIAN CEBULL
MR. JEFF PATTISON
SEN. JIM SHOCKLEY

STAFF PRESENT

JOE KOLMAN, Research Analyst
SONJA NOWAKOWSKI, Research Analyst
BARBARA SMITH, Fiscal Analyst
HOPE STOCKWELL, Research Analyst
CYNTHIA PETERSON, Secretary
TODD EVERTS, Legislative Environmental Analyst

Visitors

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

COMMITTEE ACTION

- The EQC approved the January 7 and 8, 2010, Minutes.
- The EQC voted to write a letter to DPHHS encouraging DPHHS with the means they have to work on the issue of environmental health tracking, and to seek any federal funds that may be available, so long as those funds do not require a match from the state. The letter would also express EQC's concerns about individual privacy, small hospitals, and the discharge data collection system.

CALL TO ORDER AND ROLL CALL

00:00:03 Rep. Chas Vincent, Chairman of the Environmental Quality Council (EQC), called the meeting to order at 8:00 a.m. The secretary called roll ([Attachment 3](#)).

AGENDA

ADMINISTRATIVE MATTERS - Mr. Everts

Adoption of January 7 and 8 EQC meeting minutes

00:01:27 Rep. Wilmer moved to approve the January 7 and 8, 2010, Minutes of the EQC meeting. The motion carried unanimously.

EQC budget review

00:01:50 Mr. Everts reported a remaining EQC balance of \$57,521.86.

FISCAL CONSIDERATIONS: NATURAL RESOURCE ISSUES

Overview -- Barb Smith, LFD

00:02:13 Barbara Smith, Legislative Fiscal Division, reviewed a PowerPoint presentation entitled "Fiscal Considerations for Natural Resource Agencies" ([Exhibit 1](#)).

Questions & discussion – EQC

- 00:39:30 Rep. French addressed the Department of Fish, Wildlife and Park's (FWP) general licensing fee and observed when the money comes in from licensing fees, some money goes back into programs and some stays in FWP. Rep. French asked whether FWP decides how the money is divided out.
- 00:40:09 Ms. Smith responded anything set in statute is already carved out and deposited. FWP does not have the authority to do anything differently.
- 00:40:35 Rep. French asked for clarification that upland game bird program money has to be used in that program and cannot be used to supplement the general fund operating costs. Ms. Smith agreed upland game bird program money is a dedicated revenue source and a dedicated account.
- 00:41:08 Rep. Milburn requested clarification that money for Access Montana was specifically designated for purchasing land. Ms. Smith agreed Access Montana money was specifically for purchasing land.
- 00:41:46 Sen. Hamlett asked Ms. Smith whether she projected any increase from mining operations in the future. Ms. Smith did not project increases in the immediate future.
- 00:42:56 Sen. Tutvedt believed there is a public sentiment that Montana cannot afford the government it has. Sen. Tutvedt asked whether consideration had been given to making government more efficient, so fees would not have to be raised.
- 00:43:42 Ms. Smith explained the state is in the process right now of streamlining operating processes. Ms. Smith believed it is necessary to continue to look for ways to improve. Sen. Tutvedt saw a need to look further at the Department of Environmental Quality's (DEQ) permitting process and the absurdity of some of the permitting questions. Ms. Smith explained how the framework of policy affects the DEQ's cash flow. Ms. Smith suggested a need to look at the policies that created the situation. Sen. Tutvedt believed government should be more efficient. Ms. Smith explained how the Legislature and the public process drive the policy.
- 00:47:12 Rep. French noted the difference in the oil and gas tax for 2011 and 2013. Ms. Smith explained when the formula was recalculated, it included 1.3 percent to address coal bed methane issues which will cease at the end of the biennium. Rep. French stated the money comes from the oil and gas tax paid to the state for oil and gas development. Ms. Smith agreed and explained the money is split in various ways.

(Ms. Conradi present by telephone.)

- 00:49:41 Sen. Hamlett asked whether there is a tax holiday for gold mines. Ms. Smith could not readily recall and offered to obtain the information.

- 00:50:14 Sen. Hamlett addressed Mary Sexton, Director, Department of Natural Resources and Conservation (DNRC) and asked if a gold mine were developed on DNRC land, what percentage the DNRC would receive from an ounce of gold. Director Sexton responded a lease payment and a royalty would be involved and offered to obtain further specific information. Sen. Hamlett asked whether production tax money would remain with the DNRC. Director Sexton responded rents and royalties would go into the large trust fund, but the lease money would go directly into base aid for schools.
- 00:52:02 Rep. Smith asked Director Sexton about the length of time for the permitting process for a gold mine. Director Sexton identified the Environmental Impact Statement (EIS) process through the DEQ and depicted that process as being very long.
- 00:53:41 Tom Livers, Deputy Director, DEQ, agreed the EIS process would be the most time-consuming process and could take several years, and the amount of time would depend on the challenges and the validity of the claims of those challenges. Rep. Smith understood the price of oil and gas had risen but noted production decreased.
- 00:55:59 Rep. French suggested production in the Bakken field has picked up to a small degree and exploration is increasing.
- 00:56:33 Mr. Volesky explained the lag between the oil price and oil exploration.
- 00:57:17 Rep. Smith stated the reality is that by the time permits are granted, opportunities for development may be gone. In the meantime, no new streams of revenue are being developed.
- 00:58:15 Rep. French identified the lack of a pipeline as one major issue for oil development and commented that it is too expensive to truck the oil out. Mr. Volesky agreed with Rep. French and identified a need to be able to utilize the proposed TransCanada pipeline. Mr. Volesky asked the DEQ about where the Drumlummon Mine is in the DEQ permitting process.
- 01:01:12 Judy Hanson, Permitting and Compliance Division, DEQ, explained the Drumlummon Mine has been permitted, but could not predict when the mine would be producing.
- 01:02:04 Chairman Vincent addressed Ms. Smith and questioned the placing of fees from gray wolf permits into the degradation fund and whether that would be out of bounds for wildlife purposes. Chairman Vincent suggested addressing the issue later in the meeting. Chairman Vincent observed the Reserved Water Rights Compact Commission had completed all compacts except the Flathead. Ms. Smith explained the Commission deadline was extended until June 30, 2013, and the compact needs to either be completed or the deadline extended by that date, or a court case would be initiated.

- 01:03:44 Rep. Wilmer addressed Ms. Hanson and recalled seeing data on the DEQ's permitting time and asked how long the Drumlummon Mine permitting process took. Ms. Hanson did not have the exact time, but stated it was not a lengthy timeframe.
- 01:04:58 Rep. Vincent reminded the EQC that there are numerous federal hurdles for silver and gold mines that also exist. Chairman Vincent agreed there is a need to streamline, but emphasized there is a need to also recognize the federal statutes.

Public comment

- 01:06:14 Director Sexton reported the recent quarterly oil and gas lease sale yielded approximately \$5.5 million. Director Sexton also reported timber sales are leveling off. Director Sexton stated another million dollars will be gained from cabin leases.
- 01:07:30 Mr. Livers appreciated Ms. Smith's analysis. Mr. Livers explained the DEQ has aggressively been looking at its permitting processes, and the DEQ is striving to work as efficiently as possible.
- 01:09:26 Mr. Volesky requested data on the various permitting processes. Mr. Livers offered to provide the EQC with Mr. Volesky's requested information.

Committee action, if any

There was no committee action taken.

Directions to staff

- 01:10:15 Chairman Vincent was curious to know who is actively seeking permits and where those permits are in the process.
- 01:10:45 Sen. Tutvedt requested the DEQ look at its permitting processes closer and explained difficulties and expense he has experienced with a gravel pit expansion permit application.
- 01:11:44 Rep. Dickenson commented how the gravel permitting process has moved forward in a positive manner despite dwindling resources.
- 01:13:03 Mr. Volesky explained Denbury had bought out Encore and that good results from that buyout are anticipated for the oil and gas recovery.

HJR 1 -- STUDY OF BIOMASS

Dave Sjoding, Northwest CHP Application Center

01:14:18 Dave Sjoding, Northwest CHP Application Center, gave a PowerPoint presentation entitled "Biomass and Bioenergy: Lessons from other northwest states" ([Exhibit 2](#)).

Questions from the Committee

- 01:33:01 Rep. French asked for an explanation of biochar. Mr. Sjoding explained the process used to obtain biochar.
- 01:34:23 Mr. Volesky asked about biochar and whether anyone was taking advantage of available revenue streams. Mr. Sjoding explained the creative juices have been in high gear in terms of cheap power. Mr. Sjoding explained it is not only the current cost of power that comes into play, but the cost of future power must also be considered. Mr. Sjoding also identified tax incentives and grants as considerations.
- 01:40:09 Rep. Wilmer was interested in the biomass energy team and asked about the makeup of the team and who created the team. Mr. Sjoding explained the concept and dynamics of the biomass energy team.
- 01:42:43 Sen. Hamlett asked whether there was a commercial value for biochar by the ton. Mr. Sjoding reported the value had not yet been set. Sen. Hamlett wondered how environmentally friendly the biochar process is. Mr. Sjoding reported biochar is very environmentally friendly to the soil.
- 01:44:24 Chairman Vincent asked about tax incentives and what the fiscal impact to Oregon was projected to be and how the fiscal impact ended up. Mr. Sjoding explained the fiscal impact Oregon had experienced.
- 01:45:27 Rep. Wilmer asked about the connection between the various Oregon university program expertise and the Oregon state government. Mr. Sjoding explained the universities' roles in biochar.
- 01:47:35 Ms. Fitzpatrick addressed obtaining naturally produced biochar from forest fires and the possibility of removing too much biomass from the forest. Mr. Sjoding explained sustainability is a concern.

Douglas Beer, Access Energy Technologies

01:51:13 Mr. Beer, Access Energy Technologies, gave a PowerPoint presentation entitled "Waste to Energy EnviroCycler, Reasonable, Responsible & Recycling" ([Exhibit 3](#)).

Questions from the Committee

- 02:04:32 Rep. Dickenson asked whether noise would be a factor. Mr. Beer responded the system utilizes a quiet process.
- 02:05:23 Rep. Wilmer requested affirmation of Mr. Beer's statement that the secondary combustion air travels at a velocity of mach one. Mr. Beer confirmed that secondary combustion air travels at a velocity of near mach one. Rep. Wilmer asked about the carbon conversion rate. Mr. Beer explained the carbon conversion rate for gasification is over 99 percent.
- 02:06:09 Rep. French asked how much water is used in the process. Mr. Beer stated the only water used is the water in the biomass.
- 02:06:57 Ms. Fitzpatrick asked if there were different sizes of the EnvirOcyclers. Mr. Beer stated the conversions can be sized, but they like to run at the most efficient size. Ms. Fitzpatrick was interested in obtaining efficiency information for the smaller EnvirOcyclers.
- 02:09:06 Sen. Tropila asked about the cost of EnvirOcyclers. Mr. Beer explained the cost is based on site-specific setups. Sen. Tropila asked about the cost for the EnvirOcyclers in Minnesota. Mr. Beer stated the EnvirOcyclers in Minnesota has been operating for 28 years, and he did not have the cost information.
- 02:10:32 Mr. Volesky wondered how many EnvirOcyclers are in operation and how many are in the United States. Mr. Beer explained one is in operation in the United States and the other U.S. EnvirOcyclers shut down with the industry. In addition, there are two EnvirOcyclers located in Malaysia.
- 02:10:53 Rep. French spoke about another company that has conducted biomass gasification research on agricultural crops. Mr. Beer explained his company looked at biomass from agricultural products from a different perspective and looked at reducing problems with landfills.
- 02:12:25 Sen. Hamlett asked where the machinery is manufactured. Mr. Beer responded the machinery is manufactured in the United States and British Columbia. Sen. Hamlett requested the potash fertilizer price in Minneapolis. Mr. Beer did not have the information but offered to obtain the information for Sen. Hamlett. Sen. Hamlett addressed the three-inch size limitation, and Mr. Beer explained the biomass is separated into recyclables when it is initially received. Sen. Hamlett asked whether liquid manure could be handled. Mr. Beer stated some could be handled but noted the moisture content would need to be below 65 percent.
- 02:15:31 Rep. Wilmer inquired about feasibility studies conducted to determine the availability of stock. Mr. Beer responded the waste would be analyzed to determine whether it would be feasible to do a project of that size.

(BREAK)

Chad DeLong, Tracy McIntyre -- follow-up to September forestry study presentation

- 02:35:00 Ms. McIntyre, Executive Director, Eureka Road Development Partners, was a member of the Forest Advisory Council and explained the draft recommendations made by the council.
- 02:36:26 Mr. DeLong, Missoula area Economic Development Corporation, provided a snapshot of how the recommendations came about.
- 02:47:46 Ms. McIntyre continued and addressed the perceived decline in the timber industry and the development of new economic opportunities.

Questions from the Committee

- 02:58:29 Sen. Tutvedt asked about the form of the carbon used for pencils. Mr. DeLong identified utilization of water filtration scrubbers and stated there would not be any CO₂ extract. Sen. Tutvedt asked how far they were away from constructing a plant. Mr. DeLong explained they are testing feedstock and need to build a machine and run testing. Sen. Tutvedt asked how much biomass would be needed to run six machines. Mr. DeLong was unsure of an exact number.
- 03:01:53 Sen. Hamlett asked what was being done to secure water rights and wondered how that would work with portable machines. Mr. DeLong agreed offsite, water rights would be an issue, and that the amount of water needed would not be substantial. Sen. Hamlett requested Mr. DeLong to report to the EQC on water consumption based on the size of the plant.
- 03:03:30 Sen. Tutvedt asked whether Mr. DeLong was concerned about procuring the necessary supply of wood. Mr. DeLong reported that studies indicate the wood is available, but Mr. DeLong was concerned about being able to access the wood.
- 03:05:04 Rep. Smith asked Mr. DeLong to identify the specific road blocks. Mr. DeLong identified the challenges as: (1) utilizing new technologies; (2) the perception of the timber industry; and (3) uncertainty of the supply. Rep. Smith asked Mr. DeLong to identify government obstacles. Mr. DeLong identified a need to merge what is good for forests with what is needed to make the proposed businesses financially viable. Rep. Smith specifically wanted to know what government could do to assist given the fact that much of Montana's timber is located on federal land. Mr. DeLong agreed access to federal land is problematic.
- 03:14:17 Ms. Fitzpatrick asked about the risk involved in losing product in wildfires. Mr. DeLong agreed there are risks involved when dealing with a natural resource.
- 03:16:16 Rep. Dickenson asked whether the process could use agricultural biomass products. Mr. DeLong stated the plant would be designed to take multiple waste products. Rep. Dickenson suggested one of the problems with an agricultural supply would be growing seasons and not wildfires. Mr. DeLong stated the

machines were capable of switching from different sources and utilizing a diverse source of biomass.

03:18:58 Ms. Conradi asked whether the EQC was considering acting on any proposed recommendations. Chairman Vincent requested Ms. Conradi to hold her comments until later in the agenda.

03:20:02 Sen. Tropila commented on public/private partnerships and stated he supports those partnerships.

REVIEW OF DRAFT REPORT -- Ms. Nowakowski

03:21:28 Ms. Nowakowski offered to provide copies of the DEQ's full responses to the EQC's questions. Ms. Nowakowski directed the EQC to her summary of the DEQ's responses ([Exhibit 4](#)), and the draft copy of the EQC's report "Harvesting Energy" ([Exhibit 5](#)). Ms. Nowakowski submitted proposed discussion points for the EQC's consideration ([Exhibit 6](#)). Chairman Vincent commented on the exemplary work done by Ms. Nowakowski and Ms. Stockwell.

03:30:12 Ms. Conradi echoed Chairman Vincent's comments.

Public comment

03:30:56 Kevin Furey, Department of Commerce, manages the two biomass feasibility studies and offered to answer any questions.

03:31:25 Paul McKenzie, F.H. Stoltze Land and Lumber Company, Columbia Falls, submitted written testimony ([Exhibit 7](#)). Mr. McKenzie also submitted photographs of a proposed plant for the EQC's review ([Exhibit 8](#)).

03:34:55 Kevin Jump, Kalispell, has a family trucking business in Kalispell that depends on the timber industry. Mr. Jump explained how his business had transcended into the biomass industry over the past five years. Mr. Jump explained how the business received approximately 90 percent of its business from Smurfit Stone, which has since ceased its operations. Mr. Jump spoke about the magnitude of DEQ's permitting process and asked the EQC to consider streamlining the process.

03:38:38 John Hagenruber, U.S. Forest Service liaison to Montana, introduced himself to the EQC and offered to answer any questions.

03:39:36 Ellen Simpson, Montana Wood products Association, submitted a letter from Jason Todhunter, Montana Logging Association ([Exhibit 9](#)). Ms. Simpson provided her observations of the DEQ's explanation of the air quality rules. Ms. Simpson believed it would be appropriate to provide the same exemption given to agricultural machinery to chippers and grinders that are moved frequently.

Questions & discussion of policy recommendations/legislation

- 03:44:31 Rep. Smith addressed Mr. Jump and asked about the creation of slash piles. Mr. Jump provided an explanation and agreed the process is similar to operating a combine or hay baler. Mr. Jump commented on how the ruling could fold the biomass industry in Montana. Mr. Jump estimated that last year his company processed approximately 50,000 green tons of material with just one grinder. Mr. Jump commended the State of Montana for the success of its Fuels for Schools project.
- 03:49:33 Rep. Milburn requested the DEQ comment on its rule.
- 03:49:47 David Klemp, DEQ, addressed the permitting process. Mr. Klemp explained the permitting distinctions between portable sources and mobile sources.
- 03:53:35 Rep. Milburn suggested the DEQ should be sensitive to the needs of business. Rep. Milburn addressed John Hagengruber, U.S. Forest Service, and asked him if there was anything that could be done to help change the management of U.S. forests in Montana. Mr. Hagengruber stated he has witnessed the same impacts in Wyoming. Mr. Hagengruber offered to obtain answers and information for the EQC. Rep. Milburn asked Mr. Hagengruber to relay the message that Montana is losing its forests because of the inability of the U.S. Forest Service to manage its forests.
- 03:57:46 Rep. Smith was puzzled about why chippers would need to be permitted. Mr. Klemp explained anything that has emissions needs to be permitted.
- 03:59:01 Sen. Tropila asked whether short-term solutions could be reached with the DEQ. Mr. McKenzie was hopeful a solution could be reached.
- 04:00:24 Sen. Keane asked Mr. Hagengruber to ensure there are cooperative efforts with the federal government and the ability to manage wildfire. Sen. Keane asked Mr. Hagengruber to deliver the message that Montana needs assistance in developing its economy. Mr. Hagengruber acknowledged Sen. Keane's concerns and agreed to relay the message. Sen. Keane encouraged the widening of easements on federal land for powerlines, pipelines, and along fence lines.
- 04:04:13 Ms. Conradi commented on the recommendations of the biomass working group. Ms. Conradi suggested considering the use and availability of water when choosing a site. Ms. Conradi wondered what authority each agency has for issuing long-term contracts and for determining availability. Ms. Conradi emphasized the importance of looking at long-term supply availability. Ms. Conradi also suggested a need to consider nutrient cycling and soil production. Ms. Conradi supported co-locating energy production and wood production facilities. Ms. Conradi believed planning for supply should include lands with high conservation values. Ms. Conradi also suggested it would be important to look at non-toxic feed stocks.

(LUNCH)

UPDATE ON WATER POLICY INTERIM COMMITTEE -- Mr. Kolman

05:19:59 Joe Kolman, Legislative Research Analyst, reported on the recent activities of the Water Policy Interim Committee (WPIC). The WPIC's next meeting will be March 10 and 11, 2010.

Questions from the Committee

05:22:18 Sen. Hamlett commented on the abandonment of dikes in the Great Falls area.

05:22:39 Rep. French asked if there were any new ideas regarding disposal of coal bed methane (CBM) water. Mr. Kolman explained he was directed by the WPIC to come up with various options. Rep. French asked whether changing the way the CBM water was being overseen was a consideration. Rep. French recalled the issue with HB 575 was with the senior water right users. Mr. Kolman agreed and stated HB 575 would have granted a temporary use permit for the water and a statutorily designated point of diversion and source of supply.

UPDATE ON ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE -- Ms. Nowakowski

05:25:54 Sonja Nowakowski, Legislative Research Analyst, reported on the recent activities of the Energy and Telecommunications Interim Committee (ETIC). Ms. Nowakowski submitted "Energy Policy Summary" ([Exhibit 10](#)).

Questions from the Committee

There were no questions.

HJR 30 -- STUDY OF FIRE SUPPRESSION

Overview of HJR 30 activity and discussion of next steps -- Leanne Kurtz, LSD

05:29:37 Leanne Kurtz, Legislative Research Analyst, provided an update on HJR 30 activity. Ms. Kurtz directed the EQC members to her memorandum dated February 10, 2010 ([Exhibit 11](#)). Ms. Kurtz sought further direction from the EQC.

Questions from the Committee

05:35:43 Chairman Vincent asked what the issue was with SB 131 in Ravalli County. Ms. Kurtz explained there was concern that SB 131 only gave more authority to counties; however, Ms. Kurtz suggested SB 131 sought to provide a more thorough mapping of the Wildland Urban Interface (WUI).

Fiscal considerations specific to fuels mitigation and fire suppression -- Barb Smith, LFD

05:37:45 Barbara Smith, Legislative Fiscal Division, provided an update on the Fire Suppression Fund. Ms. Smith explained the Fire Suppression Fund has a balance of \$25,700,000 to pay for the fire season. Pre-suppression costs of \$300,000 are transferred from the general fund. The average fire season runs approximately \$18.5 million. Ms. Smith was concerned about not having enough resources to address a major fire or fire season. Ms. Smith suggested there would be enough funding for only one more year.

Questions from the Committee

There were no questions.

Trees and water, an overview - Bob Harrington, DNRC

05:41:51 Bob Harrington, Forestry Division Administrator, DNRC, explained how Montana's forests are interconnected to Montana's water. Mr. Harrington explained how the pine beetles are causing an increase in water.

Questions from the Committee

05:47:58 Sen. Hamlett asked about state land that is interspersed with U.S. Forest Service land and whether road closures on U.S. Forest Service land had impacted access to state land for fire suppression. Mr. Harrington stated that, typically, the State is a party to any proposed road removal.

05:49:35 Chairman Vincent requested an update on where the EQC would like to proceed with the HJR 30 study and requested a report on how the Education and Local Government Interim Committee hearing proceeds. Chairman Vincent requested the EQC be kept updated on the upcoming fire season. Chairman Vincent solicited suggestions on how the EQC members would like to proceed.

05:50:33 Sen. Tutvedt suggested looking at fighting fires in a different manner and consider whether Montana is fighting fire in the most effective way and getting the most bang for our buck. Sen. Tutvedt was aware that fires were being fought differently on private lands. Chairman Vincent explained the jurisdictional conflicts and commented on how HB 44 will allow the state to have a more cooperative role with the federal government in planning how to address fires.

05:53:41 Mr. Harrington addressed the way Plum Creek fights fires and emphasized many times the Plum Creek logging crew is in the closest proximity to fight fires. Mr. Harrington explained the state's authority under HB 44 and that a Memorandum of Agreement (MOA) was signed approximately five months ago. Mr. Harrington recited specific efforts that are underway to work with the federal government on fire management and fuel reduction.

- 05:59:53 Sen. Tutvedt asked about the resources the state utilizes to sit and wait. Mr. Harrington explained how conditions change the deployment of resources. Mr. Harrington summarized the question as being how and when to fight large escaped fires.
- 06:03:29 Sen. Tutvedt commented on the fire conditions at Salmon Lake.
- 06:03:46 Rep. Wilmer suggested addressing HJR 30 tasks in September after the fire season.
- 06:05:00 Rep. Dickenson noted final decisionmaking needs to be done by September, so the EQC should focus on the issue in July.
- 06:05:47 Ms. Kurtz requested clarification from Rep. Wilmer as to whether the EQC wanted to address the tasks contained in the resolution and the Fire Suppression Interim Committee's (FSIC) recommendations.
- 06:06:47 Rep. Wilmer clarified it is the EQC that still needs to complete the work and not the staff.
- 06:07:43 Chairman Vincent commented that active fuels management will help mitigate costs.
- 06:08:11 Sen. Keane pointed out the FSIC and the Legislature took an in-depth look at Montana's fire assets and how they are managed. Sen. Keane spoke about how the parties involved have different points of view after a major fire season. Sen. Keane stated that initial attack is always the best way to suppress fire. Sen. Keane noted many FSIC bills did not make it through the legislative process and that the FSIC evaluated everything the DNRC did that was related to fire suppression.
- 06:10:40 Mr. Volesky agreed the amount of money spent and the ecological impacts are difficult to reconcile.

Public comment

No public comment was offered.

Questions & discussion of policy recommendations/legislation

- 06:13:09 Sen. Tutvedt believed the State needs to fight fires differently or the State will run out of money. Chairman Vincent commented about the difficult task of protecting people and their property.
- 06:16:10 Mr. Harrington commented on how the Legislature could pass laws governing the DNRC's fire fighting strategy.
- 06:18:05 Ms. Stockwell reiterated the timelines for any proposed legislation from the EQC.

Committee action, if any

There was no action taken.

Directions to staff

There were no directions to staff.

SJR 28 -- STUDY OF RECYCLING

Review of draft report & draft recommendations worksheet -- Ms. Nowakowski

06:20:32 Ms. Nowakowski reviewed the compilation of the EQC's work already done on SJR 28 ([Exhibit 12](#)) and the SJR 28 Recycling Worksheet ([Exhibit 13](#)). Ms. Nowakowski also distributed a list of the recipients of Recycling Infrastructure Grants ([Exhibit 14](#)).

Public comment

There was no public comment.

Questions & discussion of policy recommendations/legislation

- 06:28:05 Rep. Dickenson directed the EQC to Option A, which provided funding to the Montana Manufacturing Extension Center, and recalled that the Montana Manufacturing Extension Center opposed past legislation. Rep. Dickenson hoped the Montana Manufacturing Extension Center might have changed its position.
- 06:30:19 Ms. Nowakowski recalled that based on the past Legislation, the Montana Manufacturing Extension Center receives its money from coal severance money and the funding is provided in statute.
- 06:31:18 Rep. Dickenson offered to contact the Montana Manufacturing Extension Center.
06:31:32 Chairman Vincent stated he would rather see staff working on recommendations in an interim report since there are no revenue resources available.
- 06:32:35 Rep. Wilmer noted electronic waste recycling did not have any fiscal impact and noted that a resolution could be adopted supporting the federal government's proposed legislation.
- 06:34:12 Ms. Nowakowski requested direction and suggested the EQC should walk through the options in an effort to develop findings.
- 06:37:44 Rep. Dickenson suggested the EQC should review the options.
- 06:40:26 Rep. Smith recommended no more staff time or resources be expended.
- 06:40:45 Rep. Wilmer stated she would like time to review solid waste reduction goals and the targets.

- 06:41:59 Rep. Dickenson said she would like to consider exploring and endorsing the incentives for reducing waste from local landfills. Rep. Dickenson also favored creating a small loan program to acquire equipment.
- 06:43:58 Rep. Milburn stated he would need more information about the incentives and, at this point, would not support either proposal.
- 06:44:50 Sen. Keane commented the proposals would become committee bills. Chairman Vincent clarified the considerations are for inclusion in the committee report and not for proposed legislation.
- 06:45:47 Rep. Wilmer noted some of the proposals do not involve appropriations and suggested discussing those matters at tomorrow's meeting.
- 06:47:07 Rep. Dickenson agreed to postpone recommendations until the next day. Ms. Nowakowski asked the EQC to consider the general statements and whether those statements should be included without specific recommendations.

BREAK

DISCUSSION OF OTHER POSSIBLE STUDY DIRECTION & LEGISLATION

HJ 15: Tourism and Recreational Access Study

Overview -- Ms. Stockwell

- 07:06:39 Hope Stockwell summarized the purpose of the study required by HJR 15.
- 07:07:42 Rep. Milburn stated the idea was much more popular with landowners than he had originally thought. Rep. Milburn expressed concern about the funding. Rep. Milburn suggested the proposal should be dropped by the EQC, and that he would decide whether to pursue the legislation as an individual legislator.
- 07:09:50 Ms. Stockwell stated the report would need to explain the EQC's decision not to pursue legislation. Ms. Stockwell stated she researched fitting the proposal into the existing conservation license statutes. Ms. Stockwell stated the FWP Commission and FWP have the authority to acquire land for outdoor recreation. Ms. Stockwell stated there is no definition for "outdoor recreation."
- 07:11:22 Rep. Milburn suggested that as long as FWP currently has the authority, that HJR 15 not be pursued.
- 07:12:21 Ms. Stockwell noted the EQC would need to include a finding in its final report. Rep. Milburn expressed a desire to work with Ms. Stockwell on the language to develop an appropriate finding.
- 07:14:02 Rep. Dickenson asked whether a group of landowners could get together and publicize the possibility of outdoor groups utilizing their land. Rep. Milburn agreed and noted the state would not want to compete with private groups.

- 07:15:29 Ms. Conradi asked whether research had been done regarding recreational immunity or recreational use liability issues for landowners that charge a fee and/or whether there is a different standard of liability on state trust land versus other state land.
- 07:16:38 Mr. Everts believed FWP, as well as Tort Claims, had possibly done the liability research. Mr. Everts offered to research the issue and report back.
- 07:17:26 Chairman Vincent recalled legislation in the 2009 session that addressed guides and outfitters.
- 07:18:03 Ms. Stockwell clarified that the statute provides a restriction on liability for those who do not charge for access to their property. In addition, people who participate in block management are also afforded the same restriction from liability.
- 07:18:33 Ms. Conradi thought it would be worthwhile to research the State of Washington's recreational immunity statutes.

Public comment

There was no public comment.

Environmental Public Health Tracking

- 07:19:53 Ms. Stockwell submitted Rep. Dickenson's written talking points ([Exhibit 15](#)).
- 07:20:55 Bob Olson, Montana Hospital Association (MHA), addressed the MHA's current status with the State.
- 07:22:32 Rep. French requested the amount of the contract. Mr. Olson cited the amount of the contract as being \$25,000 per year for five years.
- 07:23:55 Mr. Olson explained the current Health Insurance Portability and Accountability Act (HIPAA) guidelines allow for the exchange of information with state government. However, information compiled by hospitals represents only a piece of the puzzle.
- 07:25:18 Rep. French recalled if Montana were completely on electronic medical records, it would be feasible. Mr. Olson agreed electronic records would be helpful.
- 07:26:31 Rep. Dickenson asked whether an electronic system would be able to tie into a national database. Mr. Olson suggested it would be years before Montana was close to being able to tie into other databases.
- 07:28:04 Rep. Wilmer commented there are federal grants available for IT infrastructure. Rep. Wilmer was concerned the state could be held liable for cleanup.

- 07:30:28 Rep. Dickenson stated the Department of Public Health and Human Services (DPHHS) already has a grant application in the process. Rep. Dickenson moved the EQC compose a letter of encouragement to DPHHS to seek whatever federal funds are available to promote environmental public health tracking. Rep. Smith opposed the motion since the work would cost money. Rep. Wilmer thought the liability to the state would ultimately be what would cost money. Rep. Wilmer stated she would like the letter to include concerns about privacy, small hospitals, and future liability.
- 07:35:09 Chairman Vincent suggested the motion should include allowing DPHHS to continue pursuing compiling as much health tracking information a possible. Rep. Dickenson stated she would like the letter to encourage DPHHS to look at federal sources of funding.
- 07:35:33 Rep. Milburn thought the letter should encourage, not direct, DPHHS.
- 07:36:42 Rep. Dickenson withdrew her original motion. Rep. Dickenson moved to write a letter to DPHHS encouraging them to work on the issue of environmental public health tracking with attention to their current financial resources and whatever federal resources may be available. Rep. Dickenson withdrew her motion.
- 07:37:32 Ms. Stockwell summarized the points to be included in a letter to DPHHS to encourage them with the means they have working on the issue of environmental health tracking and to seek any federal funds that may be available, so long as those funds do not require a match from the state. The letter would also express EQC's concerns about individual privacy, small hospitals, and discharge data collection system. The EQC is also concerned about future liability if the state does not work on environmental public health tracking. Chairman Vincent suggested the motion should not contain reference to the federal dollars.
- 07:38:59 Sen. Hamlett moved the proposed language. The motion carried unanimously by voice vote.

ANY UNFINISHED DISCUSSION FROM EARLIER IN THE DAY

- 07:40:31 Sen. Kean suggested the EQC members review the recycling study task options contained in Exhibit 13. Sen. Keane suggested Option B for the first study task, and Option A for the remaining study tasks.

AGENCY OVERSIGHT: DNRC – CABINSITE LEASING

Review of legal issues raised in January – Mr. Everts

- 07:41:27 Mr. Everts, Legislative Environmental Analyst and staff attorney, reviewed his "Legal Analysis Regarding Full Market Valuation of State Land Cabin Sites" ([Exhibit 16](#)).

Agency comment

07:49:27 Director Sexton thanked Mr. Everts for his legal analysis. Director Sexton explained the DNRC is currently in the public comment period. Director Sexton submitted and reviewed "State Trust Lands Cabin and Homesites, March 4, 2010 ([Exhibit 17](#)).

Public comment

07:55:25 Jeff Cunniff, a cabin owner on Placid Lake and representing the Montana State Leaseholders Association, believed the current program is not working. Mr. Cunniff believed the value should be based on fair market rental rates and not on fee simple fair market value rates. Mr. Cunniff also desired to see lease fee predictability and establishment of a study group to consider the methodology for valuation.

07:58:23 Peter Scott, Gough, Shanahan, Johnson & Waterman, representing Montana Leaseholders Association, submitted written statements from the Montana Leaseholders Association ([Exhibit 18](#)).

Questions & discussion – EQC

08:09:40 Sen. Tutvedt thanked Mr. Everts for his legal analysis. Sen. Tutvedt suggested it would be in all the stakeholders' best interests to help resolve the issues. Sen. Tutvedt asked Director Sexton to work with the leaseholders to determine fair market rental value of the properties without using the appraised fee simple value.

08:13:47 Sen. Tutvedt noted the markets are different now for rental properties and five percent no longer accurately reflects fair market value. Director Sexton believed a fair valuation was utilized to determine the lease rate.

08:15:32 Sen. Tutvedt asked Mr. Everts whether the cap rate could be changed and used across the board. Mr. Everts explained the DNRC is operating under its current statutory requirements. Mr. Everts commented that any mechanism would need a basis of value and wondered if Sen. Tutvedt was concerned about utilizing a mechanism that would reflect the market adequately on a real-time basis. Sen. Tutvedt desired to come up with a lease value that would discourage lessees from abandoning their leases. Mr. Everts explained the need for determining value in any mechanism.

08:22:24 Sen. Tutvedt asked how to fairly ascertain the fair rental market value. Mr. Everts emphasized an alternative could result in a higher lease rate.

08:24:58 Sen. Ripley asked Mr. Everts to clarify who has jurisdiction over the issue and the EQC's responsibilities. Mr. Everts responded the EQC or any legislator could develop a policy.

- 08:27:25 Mr. Volesky thanked Mr. Everts for his legal analysis. Mr. Volesky acknowledged the two competing interests and the complicated nature of the issue. Mr. Volesky believed the Land Board had developed a resolution that would hold up in court and that the resolution was reasonable for both interests.
- 08:30:40 Sen. Tutvedt identified the issue as the rental value and believed that rental value needs to be determined or the leaseholders would submit a letter of intent to abandon. Sen. Tutvedt suggested appraising to the value and adjusting the cap rate.
- 08:33:44 Chairman Vincent stated there was not enough time to conduct a study, and suggested looking at the findings and letting leaseholders propose solutions. Sen. Tutvedt agreed.
- 08:35:38 Director Sexton explained an extensive public input process was utilized and the DNRC worked with the leaseholders and a variety of proposals were considered. Director Sexton stated the Land Board had directed the DNRC to begin the rulemaking process, and that the DNRC is in that process.
- 08:36:40 Rep. French asked Mr. Cunniff to share the details of his lease. Mr. Cunniff explained his family's experiences being a leaseholder on Placid Lake.
- 08:46:21 Sen. Tutvedt addressed Mr. Scott and asked whether he could sit down with a group to determine a mechanism that would allow them to reach a fair rental value. Mr. Scott agreed. Chairman Vincent wondered about utilizing staff time.
- 08:48:27 Sen. Tutvedt agreed to drafting legislation and running the proposed legislation by Mr. Everts.

RECESS OF EQC MEETING

- 08:49:21 Chairman Vincent adjourned the meeting at 4:50 P.M.

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