



ENVIRONMENTAL QUALITY COUNCIL

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

GOVERNOR STEVE BULLOCK
DESIGNATED REPRESENTATIVE
TIM BAKER

HOUSE MEMBERS
BILL MCCHESENEY--Vice
JERRY BENNETT
VIRGINIA COURT
ED LIESER
JEFFREY WELBORN
KERRY WHITE

SENATE MEMBERS
JOHN BRENDEN--Chair
JENNIFER FIELDER
BRADLEY MAXON HAMLETT
JIM KEANE
RICK RIPLEY
GENE VUCKOVICH

PUBLIC MEMBERS
SCOTT ASPENLIEDER
DEXTER BUSBY
MARY FITZPATRICK
ROY MORRIS

COUNCIL STAFF
JASON MOHR, Research Analyst
SONJA NOWAKOWSKI, Research Analyst
HOPE STOCKWELL, Research Analyst
HELEN THIGPEN, Staff Attorney
NADINE SPENCER, Secretary
JOE KOLMAN, Legislative Environmental Analyst

MINUTES LOG

January 9, 2014

Room 317, State Capitol Building
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select *Committees*, then *Interim*. Once on the page for *Interim Committees*, scroll down to the appropriate committee. The written minutes summary, along with the audio and video recordings, are listed by meeting date on the interim committee's web page.

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

COMMITTEE MEMBERS PRESENT

SEN. JOHN BRENDEN, Chair
REP. BILL MCCHESENEY, Vice Chair

SEN. JENNIFER FIELDER
SEN. BRADLEY MAXON HAMLETT
SEN. JIM KEANE
SEN. RICK RIPLEY
SEN. GENE VUCKOVICH

REP. JERRY BENNETT
REP. VIRGINIA COURT
REP. ED LIESER
REP. JEFFREY WELBORN
REP. KERRY WHITE

MR. SCOTT ASPENLIEDER
MR. DEXTER BUSBY
MS. MARY FITZPATRICK
MR. ROY MORRIS

STAFF PRESENT

JOE KOLMAN, Legislative Environmental Analyst
HOPE STOCKWELL, Research Analyst
JASON MOHR, Research Analyst
HELEN THIGPEN, Staff Attorney
LEANNE KURTZ, Research Analyst
NADINE SPENCER, Secretary

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

- The Environmental Quality Council (EQC) voted 13-3 to object to ARM 36.12.101, relating to water wells exempt from permitting ([letter to Director Tubbs](#)).

CALL TO ORDER AND ROLL CALL

00:00:08 Sen. Brenden called the meeting to order at 8:10 a.m. The secretary noted the roll, [Attachment 3](#).

AGENDA

SJ 4 - STUDY OF VIRGINIA/NEVADA CITIES AND REEDER'S ALLEY

- 00:00:31 Sen. Keane gave an introduction to the SJ 4 study of Virginia/Nevada Cities and Reeder's Alley.
- 00:02:04 Leanne Kurtz, Research Analyst, Legislative Services Division (LSD) gave a report of the work group meeting held on November 12, 2013, [Exhibit 1](#). She discussed the \$400,000 flat fee that the Montana Heritage Commission (MHC) receives from the bed tax and provided a handout from Kris Wilkinson, Legislative Fiscal Division (LFD) showing the amount of revenue that would be generated if MHC received a percentage of the bed tax instead of a flat fee, [Exhibit 2](#).
- 00:07:13 Sen. Brenden clarified that revenue received from the light motor vehicle registration fee is automatic unless a person chooses to opt out of paying the fee.
- 00:07:34 Ms. Kurtz continued the presentation.

- 00:15:12 Sen. Keane said the work group is looking at issues involving funding sources, acquisition of land, and legislation on statutes and rules governing acquisition and disposal of property.
- 00:16:25 Sen. Ripley commented on issues that the work group will look at if the Council recommends that the work group continue to meet.
- 00:17:24 Rep. Welborn said that he is in favor of continuing the work group and looking into rules that govern disposal of property.
- 00:18:33 Rep. Court stressed the historical importance of Virginia City and said that if Montana wants to stay invested in the property and preserve the structures and artifacts there needs to be an increase in funding and a change in the administrative rules.

Committee questions and discussion

- 00:20:14 Sen. Brenden asked about the possibility of selling Reeder's Alley. Sen. Keane said the Land Board would need to make that decision. He said it would be easier to transfer the property to another entity.
- 00:21:15 Helen Thigpen, Staff Attorney, LSD, provided information on how the MHC acquired Reeder's Alley and discussed the statutes governing disposal laws relating to MHC properties, Exhibit 3.
- 00:21:50 Sen. Brenden said that Virginia City and Nevada Cities are a different entity than Reeder's Alley and the Council needs to decide how to prioritize funding for them.
- 00:23:59 Rep. Welborn said that the Council needs to consider safety and liability issues in regards to the buildings at Virginia and Nevada Cities.
- 00:24:43 Sen. Fielder asked about the market value of the non-historic properties and if selling those properties would solve the financial problem. Sen. Keane said that with the help of the MHC they could come up with legislation that would make it easier to sell the properties.
- 00:26:45 Sen. Hamlett said that conditions can be put on the sale of the properties to preserve the historic character of Virginia City.
- 00:27:53 Mr. Aspenlieder asked about the historical importance of Reeder's Alley and if the City of Helena or any local historic group has been approached about forming an entity to transfer the property from the state. Sen. Keane said that Reeder's Alley is significant to the city of Helena.
- 00:31:46 Sen. Ripley said the rules for acquisition and disposal of property need to be addressed before discussions about transferring land can take place. Sen. Brenden said that he agreed and that there needs to be legislation to make it easier for the state to sell property.

- 00:33:43 Rep. Court asked about changing the bed tax percentage. Andy Poole, Division Administrator, Department of Commerce, said that is being discussed. Sen. Brenden requested that the Council be kept up to date on the discussions. Mr. Poole said that the MHC will be meeting in March to make recommendations to the Governor.
- 00:37:21 Sen. Keane said the work group looked at the bed tax, but there needs to be support from the administration. Sen. Brenden said that he agreed.
- 00:38:17 Ms. Thigpen clarified the process for an exchange of land under section 77-2-351, MCA.
- 00:39:33 Sen. Brenden asked if an exchange could go to a 501(c)(3) nonprofit organization. Ms. Thigpen said she will check and see if it is allowed in the statute.
- 00:40:23 Rep. White asked if the EQC needs to come up with a disposal process. Sen. Keane said that the work group did discuss legislation that the Council may be interested in, but that the MHC needs to look at the rules they have put into place which complicate the disposal process.
- 00:42:21 Sen. Ripley asked the Council to give direction to the work group and what specific issues they would like addressed.
- 00:43:20 Elijah Allen, Director of Operations, MHC, gave a report on the importance of the artifacts at Virginia City, [Exhibit 4](#).

Public comment

- 00:54:10 Marilyn Ross, Chair, MHC
- 01:00:01 Chere Jiusto, Executive Director, Montana Preservation Alliance
- 01:06:46 Sen. Brenden asked the Council if anyone objected to having the SJ 4 work group continue to work on a bill draft or rule change.
- 01:07:15 Sen. Keane said the work group is looking for recommendations that will be approved by the EQC. Sen. Ripley said that he agreed.
- 01:08:17 Sen. Brenden gave instructions for the work group to continue.
- 01:09:17 Rep. McChesney asked if the intent of the work group is to bring a bill draft back to the EQC or recommendations. Sen. Keane said they will try to bring three bill drafts, one for each of the properties.
- 01:10:35 Rep. McChesney commented that it is a critical issue and the Legislature needs to act.
- 01:11:01 Sen. Keane thanked the legislative staff, the MHC, and the volunteers for their work.

SEPTIC INSPECTION AT TIME OF TRANSFER

- 01:11:54 Ms. Kurtz gave a review of HB 483 (2013) and discussed what other states are doing with regard to septic system inspections when property is transferred, [Exhibit 5](#).
- 01:19:00 Barb Kingery, Subdivision Review Section, Permitting and Compliance Division, Department of Environmental Quality (DEQ) gave an overview of the regulations governing septic systems in Montana, [Exhibit 6](#).

Panel Discussion

- 01:21:51 Mike Koopal, Executive Director, Whitefish Lake Institute
- 01:32:06 Abigail St. Lawrence, representing Montana Association of Realtors (MAR), [Exhibit 7](#).
- 01:36:38 Beth Norberg, Registered Environmental Health Specialist, Lewis and Clark County Health Department

Public comment None

Committee questions and discussion

- 01:42:12 Rep. Lieser asked how many counties in the state have some type of inspection for septic system maintenance. Ms. Kingery said that Lewis and Clark County is the only county that has an ongoing maintenance program.
- 01:44:14 Rep. Lieser asked if counties would adopt state regulations. Ms. Norberg said the issue will be funding and extra work loads for health departments. Ms. St. Lawrence agreed and said counties are willing to exercise authority they already have, but lack the funding.
- 01:48:02 Sen. Fielder asked who pays for the septic system inspection and the cost. Ms. St. Lawrence said that at the time of sale the seller usually pays for the inspection, but did not have specific information on the cost.
- 01:48:57 Ms. Norberg said that voluntary inspections are done by independent contractors, usually from septic pumping companies, and charge between \$75 to \$100 for inspection of the tank and drain field.
- 01:49:16 Sen. Fielder asked what information is obtained from a septic inspection. Ms. Norberg said that it depends on the type of inspection that is done.
- 01:51:40 Sen. Fielder asked Mr. Koopal for his position on inspections being done in an area where there may be an indication of pollution and the proximity of the septic system to a water source versus inspecting every single septic system in the state.

- 01:54:41 Sen. Vuckovich commented on state regulations for inspections and the lack of funding.
- 01:55:33 Rep. Bennett commented that the DEQ has standards that counties have already adopted and recommended educating the public rather than making more regulations.
- 01:58:10 Rep. Lieser clarified that he is not proposing regulations to require a county to inspect septic systems, but rather a set of rules that could be adopted by the county if funding is available.
- 01:59:50 Recess
- 02:11:39 Reconvene

STATUTORY ADMINISTRATIVE RULE REVIEW

- 02:12:04 Ms. Thigpen gave an overview of the proposed administrative rule to define combined appropriation for water wells exempt from permitting, [Exhibit 8](#).
- 02:17:55 Joe Kolman, Legislative Environmental Analyst, LSD, provided a copy of the proposed rule and a copy of the letter written by the Water Policy Interim Committee (WPIC), to the Department of Natural Resources and Conservation (DNRC), regarding the definition of combined appropriation, [Exhibit 9](#).
- 02:18:30 Mr. Tim Davis, Administrator, Water Resources Division, DNRC, gave an overview of the changes that were made to the definition of combined appropriation, [Exhibit 10](#).

Public comment

- 02:29:59 Mike Murphy, Executive Director, Montana Water Resources Association (MWRA)
- 02:33:03 Ms. St. Lawrence, MAR
- 02:37:51 Rhonda Wiggers, Montana Water Well Drillers Association (MWWDA)
- 02:41:21 Tara DePuy, Land Use Attorney, Montana Association of Counties (MACo)
- 02:44:09 John Youngberg, Executive Director, Montana Farm Bureau Federation (MFBF)
- 02:46:00 Dustin Stewart, Montana Building Industry Association (MBIA)
- 02:49:56 Jay Bodner, Montana Stockgrowers Association (MSGA)
- 02:51:25 Krista Lee Evans, Association of Gallatin Agricultural Irrigators (AGAI)

Committee questions and discussion

- 02:53:45 Sen. Fielder commented on the revisions to the proposed rule and the letter that was written to the DNRC by the WPIC.
- 02:56:44 Rep. McChesney said that he disagreed that the rule is an attempt to manage land, but rather it is an attempt to protect the right to ownership of a water right holder and to protect senior water rights.

- 03:00:07 Sen. Brenden said that the rule does not meet legislative intent and he will vote to object to the rule.
- 03:04:10 Sen. Hamlett gave a history of the study of exempt wells and the rule to define combined appropriations.
- 03:12:50 **Motion/Vote:** Sen. Hamlett moved to object to the rule. The motion carried 13-3 by roll call vote with Rep. Court, Ms. Fitzpatrick, and Rep. McChesney voting no, [Exhibit 11](#).

EQC STATUTORY REPORTING REQUIREMENT INTEGRATED WASTE MANAGEMENT PLAN UPDATE

- 03:14:45 Bonnie Rouse, Section Supervisor, Planning, Prevention and Assistance Division, DEQ, gave an update on the state integrated waste management plan, [Exhibit 12](#).

EQC STATUTORY REPORTING REQUIREMENT PETROLEUM TANK RELEASE SITE CLOSURE UPDATE

- 03:17:47 Rebecca Ridenour, Section Supervisor, Petroleum Technical Section, Remediation Division, DEQ, gave an update on the petroleum tank release site closures for the second half of 2013, [Exhibit 13](#).

Committee questions and discussion

- 03:19:09 Sen. Keane said he talked to the DEQ about providing funding during the next legislative session to clean up the sites and provide assistance for people who cannot afford it.

CLEAN WATER ACT UPDATE

- 03:22:04 Mr. James Pendergast, Acting Director, Wetlands Division, Office of Wetlands, Oceans and Watersheds, Environmental Protection Agency (EPA), gave an update on the status of the proposed rule defining "waters of the United States" that will help to determine where the Clean Water Act applies.
- 03:30:58 Sen. Brenden said that the Montana Legislature passed a resolution opposing the rules and that this was sent to the U.S. Congress. Mr. Pendergast said that he is aware of the legislation that the U.S. Congress has reviewed. He said that since Congress can change the law they can make a much broader change than any regulation from the executive branch of the federal government.
- 03:33:10 Mr. Pendergast said he is not able to discuss any of the specifics in the proposed rule until it is formally proposed. Sen. Brenden asked Mr. Pendergast to keep the EQC informed regarding any information on the proposed rule.

- 03:34:46 Laurie Alexander, Research Scientist, Office of Research and Development, National Center for Environmental Assessment, EPA, discussed the peer-reviewed science report, *Connectivity of Streams and Wetlands to Downstream Waters*, which the proposed rule will take into consideration.
- 03:42:08 Sen. Brenden asked where to send public comment and for the names of the members on the advisory board. Ms. Alexander said she will provide the email address for the science advisory board members.
- 03:43:15 Mr. Youngberg, MFBF, asked if ground water creates a significant nexus. Mr. Pendergast said that by itself ground water is not a significant nexus.
- 03:44:47 Mr. Youngberg asked if the connectivity report considers that all waters would be navigable waters of the U.S. and the EPA would have control over all waters. Mr. Pendergast said that the report describes the connection of one water to another and what is known about it. The EPA will interpret the degree to which that connection could be considered significant.
- 03:45:46 Ms. Alexander added that it is clear from the scientific literature that there are different degrees of water connectivity.
- 03:46:58 Sen. Brenden requested information regarding the number of farmers, ranchers, and land owners who were asked to comment on the proposed rule.
- 03:48:02 Sen. Hamlett asked which state organizations in Montana were contacted and made aware of the proposed rule. Mr. Pendergast listed the national associations that were contacted.
- 03:50:20 Sen. Hamlett said he is concerned that the EPA is being intrusive in state regulation and ownership of waters and that when changes are being considered to water policy they need to contact all the state agencies.
- 03:51:39 Sen. Vuckovich asked about the amount of information they gained from Montana since the continental divide is a primary source for the water system in the West. Mr. Pendergast said they did not work directly with any state agencies in Montana.
- 03:53:30 Sen. Hamlett asked if they contacted any of the Indian tribes in the West for comments. Mr. Pendergast said they entered into formal consultation with the tribes through the Tribal Operations Council.
- 03:54:34 Sen. Hamlett asked which tribes in Montana were contacted. Mr. Pendergast said he will find out and forward the information to the Council.
- 03:55:07 Mr. Pendergast said that they are not addressing any of the current exemptions for agriculture and they remain unchanged.

03:55:56 Sen. Ripley asked which Congressional committee has oversight of the EPA and if Congress will have a chance to object to the rules. Mr. Pendergast said that several committees have oversight of the EPA. He said under the Congressional Review Act, once a rule is completed and published it cannot be effective for 30 days, giving Congress time to consider whether or not to pass a law to rescind the rule.

03:57:43 Sen. Hamlett commented on the rulemaking process.

3:58:53 Recess

05:20:49 Reconvene

TRUST LAND CABIN SITE UPDATE

05:21:12 Mr. John Grimm, Bureau Chief, Real Estate Management Bureau, Trust Land Management Division, DNRC, gave a report on the progress made implementing the cabin site sales under SB 369 (2013), [Exhibit 14](#).

Public comment

05:30:44 Corey Markovich, representing Montana State Leaseholders Association

Committee questions and discussion

05:37:34 Sen. Keane asked if enough money will be put into the Governor's budget to quickly move through the sale process. John Tubbs, Director, DNRC, said the money is being taking into consideration and is on the agenda for discussion.

05:39:10 Sen. Keane asked if the DNRC can use available land banking money to put additional sites up for sale. Mr. Tubbs said that the DNRC has to pay for the appraisals and the land banking money has already been budgeted for other programs.

05:40:42 Sen. Keane asked if there was another way to sell more sites. Mr. Grimm said that by statute they are required to pay for surveys and appraisals of the land and that because of the lack of funding they can only move five sales through the sale process for 2014.

05:41:55 Sen. Keane asked if the DNRC could move forward if the lessee agreed to pay for the appraisal. Mr. Grimm said that has not yet been considered.

05:42:58 Rep. Court asked about the average cost of an appraisal. Mr. Grimm said that appraisal values vary widely for different appraisers.

05:44:31 Rep. Court asked if septic systems could be a potential problem on some of the sites. Mr. Grimm said that any sale of the lot will have to comply with current sanitary codes.

- 05:45:40 Rep. Court asked if there would have to be an inspection of the septic system if the appraisal found a problem. Mr. Grimm said that not all of the septic systems will be inspected on all the cabin sites before they are sold.
- 05:46:28 Rep. Court asked if the lessee pays for the survey of the land if that would speed up the process to sell the cabin lots. Mr. Grimm said that it would help, but they still need staff to work with the surveyor to make sure the survey is properly completed.
- 05:48:07 Rep. Bennett asked how much money has been budgeted for the sale of the five cabin sites. Mr. Grimm said they are hoping that the cost is no more than \$10,000 for the appraisal.
- 05:49:20 Rep. Bennett asked if the \$10,000 is for the total appraisal of real property and the buildings or just the property. Mr. Grimm said the money is for the cabin site and not the improvements.
- 05:49:40 Rep. Bennett asked about the total cost for the appraisals. Mr. Grimm said they will not know the exact cost until bid requests are put out for the appraisals.
- 05:50:05 Sen. Vuckovich asked if it would be more cost effective for the DNRC to hire its own appraiser. Mr. Grimm said that the agency has been unsuccessful in trying to hire a Montana General Certified appraiser.
- 05:51:34 Sen. Brenden asked how long it took for DNRC to sell 48 land banking parcels in Eastern Montana. Mr. Grimm said that it took a year to sell the sites.
- 05:52:14 Sen. Brenden asked if all of the 800 cabin sites have been surveyed. Mr. Grimm said that a little over half of the sites have been surveyed.
- 05:52:49 Sen. Brenden said they should let the person who is buying the lease pay for the cost of the appraisal and survey and then the DNRC can deduct those fees from the purchase price at the time of closing. Mr. Grimm said they cannot divert sale proceeds to pay for any processing costs. He said the sale proceeds have to go into the land banking fund and be reinvested.
- 05:55:19 Sen. Brenden asked if the process can be changed through legislation. Ms. Thigpen said that she will look into it.

EQC STATUTORY REPORTING REQUIREMENT: COMPLIANCE AND ENFORCEMENT REPORTS

- 05:56:33 Jason Mohr, Research Analyst, LSD, explained that statute requires the DNRC, DEQ, and the Department of Agriculture (MDA) to provide a report every other year to the EQC on environmental compliance and enforcement information.

Compliance and Enforcement Report: Department of Agriculture

05:58:51 Ron de Yong, Director, MDA, gave a summary of the report on the Pesticide and Groundwater Enforcement programs, [Exhibit 15](#).

Public comment None

Committee questions and discussion

06:09:04 Sen. Vuckovich asked if the report could be sent to the EPA. Mr. de Yong said they meet annually with the EPA.

Compliance and Enforcement Report: Department of Environmental Quality

06:10:42 Tracy Stone-Manning, Director, DEQ, provided her agency's report summarizing the permitting, compliance assistance, and enforcement work conducted by the DEQ during FY2012 and FY2013. She said that most are in compliance with standards for clean water and clean air, [Exhibit 16](#).

06:14:06 John DeArment, Division Administrator, Permitting and Compliance Division, DEQ, introduced himself as the new Division Administrator.

Public comment None

Committee questions and discussion

06:14:58 Rep. Lieser asked how the DEQ participates in air quality review related to wildfire or smoke management. Ms. Stone-Manning said that the DEQ provides daily air quality reports on its website.

06:16:44 Rep. Lieser asked about management activities for controlled burns. Ms. Stone-Manning said the DEQ follows local regulations.

06:17:55 Mr. Aspenlieder asked about the status of the compliance order in Sidney, Montana. Ms. Stone-Manning said DEQ is working on several alternatives with Sidney in order to meet compliance goals.

06:20:28 Sen. Brenden commented on the frustration in Montana of working with the EPA in a timely manner. Ms. Stone-Manning commented on the DEQ's working relationship with the EPA.

Compliance and Enforcement Report: DNRC

06:23:54 John Tubbs, Director, DNRC, provided the enforcement report for the five divisions within the DNRC that have enforcement and compliance responsibilities, [Exhibit 17](#).

Public comment

06:32:02 Gene Erb, Dixon, Montana
06:32:37 Sen. Brenden

Committee questions and discussion

06:33:09 Rep. White asked Mr. Tubbs how many of the 950 grazing leases were renewed in FY2013.

06:35:47 Rep. White commented about retiring grazing leases and Sen. Brenden clarified that leases discussed the day before were federal leases.

06:36:29 Sen. Hamlett asked about the effect of adding sage grouse to the endangered species list. Mr. Tubbs said that the immediate effect will be on federal land management, but that the Governor's advisory council is to try to have a management plan in place to prevent listing.

06:39:27 Sen. Keane asked if the DNRC was going to release money from the fire fund to mitigate fires for the coming year. Mr. Tubbs said that they have put together a management plan on how to expend the money.

06:42:14 Sen. Keane asked when the DNRC will begin mitigation efforts. Mr. Tubbs said he will have information available at the next EQC meeting.

06:42:39 Sen. Keane commented on the coordination of the reports by Mr. Mohr.

06:43:16 Sen. Fielder asked about the impact of federal lands surrounding state trust lands. Mr. Tubbs explained the impact.

06:45:48 Sen. Fielder asked about the difference in the ability to develop oil and gas on state land versus federal land. Mr. Tubbs explained how listing of the sage grouse would affect development on federal and state lands.

06:47:39 Sen. Brenden commented on the effect that listing sage grouse would have on lease holders in Daniels County.

RESULTS OF BLOCK MANAGEMENT PERFORMANCE AUDIT

06:50:34 Joe Murray, Performance Audit Manager, Legislative Audit Division (LAD), gave an overview of FWP's Block Management program, [Exhibit 18](#), and discussed the findings of the performance audit, [Exhibit 19](#).

Committee questions and discussion

07:10:31 Sen. Ripley commented that he was disappointed in FWP's response to the audit.

- 07:11:26 Rep. Welborn commented on HB 607 (2011) and explained why the money that was set aside by separating licenses under that bill was going into the general fund and not back into the Block Management program.
- 07:13:24 Mr. Busby asked if the Block Management program guaranteed access into conservation easements and if landowners are being paid to provide access. Mr. Murray said landowners are being paid for the conservation easement and by the Block Management program.
- 07:13:58 Sen. Brenden said he was unaware that double payments were being made until he read the audit.
- 07:15:41 Recess
07:37:38 Reconvene
- 07:37:47 Ken McDonald, Administrator, Wildlife Division, FWP, referred the Council to comments submitted by FWP in response to the audit, [Exhibit 20](#). He said they have a new Private Land/Public Wildlife Council, appointed by the Governor, to look at all of FWP's access programs including the Block Management program.

Public comment None

Committee questions and discussion

- 07:53:38 Sen. Vuckovich asked for clarification on the recommendations that were made in the audit. Angus Maciver, Deputy, LAD, explained that under the Legislative Audit Act, the LAD has no authority to enforce recommendations from the independent audit.
- 07:56:06 Sen. Vuckovich asked what the audit accomplishes if it cannot be enforced. Sen. Brenden said that the Legislature has the power to cut FWP's budget.
- 07:57:49 Rep. White said that FWP needs to set consistent rules and he is concerned that some people may be given preference over others. He asked when FWP will address the audit and when the EQC can expect a response. Mr. McDonald said they are in the process of discussing and addressing the findings of the audit.
- 08:03:03 Rep. White requested that FWP update the EQC at the next meeting regarding the inconsistencies brought up in the audit.
- 08:03:45 Sen. Keane asked Mr. Maciver to report back at the next EQC meeting and let the Council know if FWP has worked with the LAD on any of the recommendations that were not concurred in. Mr. Maciver said they do have a follow-up process and he will provide an update.

- 08:05:11 Rep. Court said she is on the Audit Committee and clarified the audit procedure and report and asked Mr. Maciver if FWP was asked to come back to the Audit Committee to address concerns in the report. Mr. Maciver said that there was not a specific request for FWP to come back to the committee, but that there was a fair amount of discussion at the committee meeting.
- 08:08:46 Sen. Hamlett asked about remuneration for landowners based on having great habitat verses having game and how that affects block management. He also asked if FWP was looking at putting block management in areas where there is game. Mr. McDonald said that payments based on hunter days are intended to offset impacts from hunters. He said if game is down, hunter use will be down, and therefore payments will be down. He said they are looking at where to prioritize block management and other access programs and will focus on areas that have too many animals with the inability to harvest those animals.
- 08:12:27 Sen. Brenden said that block management should be prioritized to areas where there is habitat.

FORT SMITH WATER SUPPLY

- 08:17:27 Thomas Donovan, physician and property owner in Fort Smith, discussed the dangers of the drinking water system in Fort Smith and said that it is in violation of the Uniform Plumbing Code, [Exhibit 21](#).
- 08:27:31 Tom Livers, Deputy Director, DEQ, explained how the stop and waste valves that are used in Fort Smith work and discussed the concern about contamination into the water system. He said that the DEQ believes that they are a safe and cost effective option for meeting challenges of freeze protection in areas like Fort Smith that meet the right criteria.
- 08:38:44 David Cook, Bureau Chief, Building Standards Program, Business Standards Division, Department of Labor and Industry (DLI) discussed the role of the DLI and said that the Building Codes Bureau has never required permits or performed inspections on a water supply system. He said that the Uniform Plumbing Code is a standard they use for inspecting plumbing on the inside of buildings.

Public comment None

Committee questions and discussion

- 08:44:00 Sen. Hamlett commented on frost free hydrants.
- 08:46:03 Sen. Brenden said he appreciated that the DEQ and DLI were present to answer Mr. Donovan's questions.
- 08:46:34 Mr. Cook said, in reference to a question from Mr. Donovan, that he has never talked to Great West Engineering about the water project in Fort Smith.

SAGE GROUSE ADVISORY COUNCIL UPDATE

- 08:47:21 Ken McDonald, Administrator, Wildlife Division, FWP, gave an update from the Greater Sage-Grouse Conservation Advisory Council on the state-wide plan to preclude the need to list the greater sage-grouse as an endangered species.
- 08:55:16 Rep. McChesney said that the advisory council will be meeting next week and that several subcommittees have been meeting to work on incorporating some of the public comment into the management plan.
- 08:56:19 Sen. Hamlett said that the advisory council has addressed the threats that were listed by the federal government.

Public comment

- 08:57:58 Mr. Dave Galt, Executive Director, Montana Petroleum Association, [Exhibit 22](#)
- 09:03:07 Todd O'Hare, Cloud Peak Energy
- 09:05:20 John Youngberg, MFBF
- 09:08:33 Jay Bodner, MSGA
- 09:10:44 Shelby DeMars, United Property Owners of Montana
- 09:11:55 Web Brown, Montana Chamber of Commerce

Committee questions and discussion

- 09:13:07 Sen. Fielder asked what the recovery goal is for the greater sage-grouse in Montana. Mr. McDonald said that there is no recovery goal since they are not endangered in Montana.
- 09:13:38 Sen. Fielder asked if the greater sage-grouse is in jeopardy of going extinct. Mr. McDonald said that the greater sage-grouse are not in jeopardy of going extinct in Montana.
- 09:14:11 Sen. Fielder asked when Montana learned that the greater sage-grouse would become an issue in the state. Mr. McDonald said that it has been an ongoing issue for the last decade.
- 09:15:56 Sen. Fielder asked how closely Montana monitors the Federal Register for notice of endangered species listings. Mr. McDonald said the state is very active in monitoring the Federal Register, but that a lot of the process is fairly well along before anything is published in the Federal Register.
- 09:20:30 Sen. Fielder asked if FWP commented about grazing and over grazing. Mr. McDonald said that he did not know if FWP went into that level of detail, but said he will find out.
- 09:21:32 Sen. Fielder said that it is worth the time and effort to monitor the Federal Register in detail.

- 09:21:51 Sen. Ripley asked why the Montana Greater Sage-Grouse Plan is more stringent than Wyoming's plan when the U.S. Fish and Wildlife Service (FWS) has already adopted the Wyoming plan. Mr. McDonald said the advisory council recommended the plan in part because Wyoming's plan is seven to eight years old and the science has changed and evolved over time.
- 09:22:59 Sen. Ripley asked for a copy of the scientific research indicating that the area of disturbance affecting the greater sage-grouse is up to four miles. Mr. McDonald said that he will provide a copy of the research.
- 09:23:29 Mr. Aspenlieder asked if there is any scientific research indicating that the .6 mile buffer had a negative impact on greater sage-grouse populations in Wyoming. Mr. McDonald said that the buffers have not been in place long enough to determine the impact and that he is unaware of any scientific research that has been done.
- 09:26:26 Mr. Aspenlieder commented on the need to consider the collective impact that the advisory council's plan may have on the resource industry and suggested that the EQC send a letter to the Governor stating the Council's concerns.
- 09:30:51 Sen. Ripley questioned Mr. McDonald about the scientific research behind the buffer zone.
- 09:32:36 Sen. Hamlett said that public comment at the final advisory council meeting will have a big impact on the plan that is submitted to the Governor.
- 09:36:23 Rep. McChesney said that the advisory council talked to David Naugle, at the University of Montana, in determining the one mile buffer zone. He said the area of the buffer zone has been one of the bigger issues that the advisory council has dealt with and that it will depend on the science that is being used to make the determination.
- 09:39:38 Sen. Brenden gave his opinion on the science used for determining the buffer zone.
- 09:44:46 Sen. Hamlett said that the next advisory council meeting is scheduled for January 14 and 15.
- 09:45:26 Mr. McDonald said, in response to a question from Sen. Brenden, that FWP does not sell a license specific to sage grouse, but they sell approximately 35,000 resident and 10,000 nonresident upland game bird licenses for a total revenue of approximately \$1.2 million.
- 09:45:53 Sen. Brenden asked how many of the upland game bird hunters hunt sage grouse. Mr. McDonald said that they harvest approximately 4,000 sage grouse so he estimated that about 2,000 people hunt sage grouse.

- 09:46:15 Sen. Brenden said that since sage grouse are only a small revenue stream it would not have much of an effect if hunting of sage grouse was not allowed. Mr. McDonald said that, from their perspective, hunting is viewed as an opportunity not a management tool.
- 09:46:49 Sen. Brenden commented on listing the greater sage-grouse as an endangered species.
- 09:48:21 Sen. Hamlett clarified the area on the map showing the core area for greater sage-grouse habitat (see exhibit 22).
- 09:49:35 Sen. Brenden commented on land ownership and the rights of a private citizen.
- 09:50:28 Mr. Baker said that, on behalf of the Governor, he thanked Sen. Hamlett and Rep. McChesney for their participation on the advisory council. He also explained why Jeff Hagener, Director, FWP, was absent from the meeting.

BISON MANAGEMENT

- 09:52:07 Pat Flowers, Regional Supervisor, Region 3, FWP, gave an overview of how bison are being managed in the Yellowstone National Park area.
- 10:01:30 Christian Mackay, Executive Officer, Montana Board of Livestock, gave an overview of the Interagency Bison Management Plan for 2014, [Exhibit 23](#).

Committee questions and discussion

- 10:05:58 Rep. White provided a copy of a letter that was sent to the Phillips County News, from the Phillips County Livestock Association, addressing the effects of the bison that were moved into the area, [Exhibit 24](#). He asked Mr. Flowers to address the two no hunting areas outside of Yellowstone National Park. Mr. Flowers explained the reasons behind the hunting closures in the two areas.
- 10:10:19 Rep. White asked Mr. Flowers where in the process FWP is in the proposed plan to allow bison from the Gallatin National Forest into the Taylor Fork Area and down to Buck Creek near Big Sky.
- 10:13:01 Rep. White asked about the comments FWP received on bison. Mr. Flowers said the majority of comments were made by bison advocacy groups and their members.
- 10:15:01 Rep. White commented on safety concerns related to allowing bison out of Yellowstone National Park.
- 10:17:20 Sen. Keane asked what the role of the EQC will be in the bison management plan. Ms. Thigpen said the EQC will have a role in any administrative rule process.
- 10:18:40 Sen. Keane asked Ms. Thigpen to keep the Council updated regarding the bison management plan.

- 10:19:06 Sen. Brenden said that bison are a Montana problem and should be a Montana solution.
- 10:20:47 Sen. Fielder said that legislation is being proposed regarding the importance of public comment made by citizens of Montana versus people from out of state. Sen. Keane commented on Sen. Fielder's statement.
- 10:22:21 Sen. Brenden commented on the meeting and commended the Council on its work.
- 10:23:20 Sen. Hamlett said that it is important that Montana develop a management plan for the greater sage-grouse rather than the federal government.

PUBLIC COMMENT ON ANY MATTER NOT CONTAINED IN THE AGENDA

- 10:25:07 Gene Erb, [Exhibit 25](#) (CD not included)
- 10:33:30 Rep. Keith Regier
- 10:37:19 Rep. Nancy Ballance, [Exhibit 26](#)
- 10:43:31 Tim Orr, St. Ignatius, Montana
- 10:47:19 Mr. Erb

OTHER BUSINESS

- 10:49:00 Rep. White asked for an update on the grizzly bear problem in the Pondera Colony at the next EQC meeting.

Discussion of SJ 15 Public Land Study

- 10:49:46 Sen. Keane
- 10:52:54 Sen. Fielder
- 10:54:53 Rep. Lieser
- 10:57:19 Mr. Aspenlieder
- 11:01:40 Sen. Ripley
- 11:02:06 Mr. Kolman
- 11:02:32 Sen. Ripley
- 11:03:31 Sen. Fielder
- 11:06:13 Sen. Ripley
- 11:07:05 Rep. White
- 11:07:28 Sen. Keane
- 11:08:20 Sen. Brenden
- 11:08:26 Sen. Vuckovich
- 11:13:12 Sen. Brenden
- 11:14:56 Sen. Vuckovich
- 11:15:17 Sen. Brenden
- 11:15:35 Sen. Fielder
- 11:15:59 Sen. Brenden

ADJOURN

11:16:12 Sen. Brenden adjourned the meeting at 7:25 p.m.

CI0099 4041nsxa.