



ENVIRONMENTAL QUALITY COUNCIL

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MARY FITZPATRICK
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SONJA NOWAKOWSKI, Research Analyst
HOPE STOCKWELL, Research Analyst
HELEN THIGPEN, Staff Attorney
NADINE SPENCER, Secretary
JOE KOLMAN, Legislative Environmental Analyst

MINUTES LOG

September 10, 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 (arrived late)

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 (arrived late)

STAFF PRESENT

JOE KOLMAN, legislative environmental analyst
HOPE STOCKWELL, research analyst
HELEN THIGPEN, staff attorney
NADINE SPENCER, secretary

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

- The Environmental Quality Council (EQC) approved the minutes from July 9-10, 2014, as amended.
- The EQC voted 16-0 to approve the SJ 4 study report and LC MHC1 as a committee bill.
- The EQC voted 16-0 to approve the formation of a joint subcommittee between the EQC and the Energy and Telecommunications Interim Committees (ETIC) on the Environmental Protection Agency (EPA) rule on the Clean Power Plan.
- The EQC voted 9-7 to approve LC 4444 as a committee bill.
- The EQC voted 14-2 to approve the SJ 15 study report as amended.
- The EQC voted 16-0 to approve initial drafting of legislation proposed by the Department of Natural Resources and Conservation (DNRC).
- The EQC voted 16-0 to approve initial drafting of legislation proposed by the Department of Environmental Quality (DEQ).
- The EQC voted 11-5 to approve initial drafting of legislation 1-6, proposed by the Department of Fish, Wildlife, and Parks (FWP).
- The EQC voted 16-0 to advance the study resolution on state assumption of the dredge and fill permit program as a committee bill.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Brenden called the meeting to order at 8:02 a.m. The secretary called the roll, [Attachment 3](#).

ADMINISTRATIVE MATTERS

- 00:01:17 Joe Kolman, legislative environmental analyst, Legislative Services Division (LSD), opened discussion on the minutes from the July 9-10 EQC meeting.
- 00:01:31 Sen. Brenden asked if the EQC members have had all of their questions answered by staff and the state agencies. He asked if there were any corrections or additions to the minutes.
- 00:02:06 Sen. Keane said there is one correction.
- 00:02:17 Hope Stockwell, research analyst, LSD, said at time stamp 07:35:17 the amount should be \$191,000.
- 00:03:19 **Motion/Vote**: Sen. Keane moved to accept the July 9-10, 2014 EQC minutes as amended. The motion carried unanimously by voice vote.
- 00:03:38 Mr. Kolman requested that the EQC complete the staff evaluations.
- 00:04:35 Sen. Brenden said Sen. Keane, Sen. Ripley, Sen. Hamlett, and Ms. Fitzpatrick will not return as members of the EQC because they have reached their term limits.

AGENDA

PETROLEUM TANK RELEASE PROGRAM/FUND COORDINATION UPDATE

- 00:05:26 Tom Livers, deputy director, DEQ, said one of the items in the audit done by the EPA on the solvency of the Petroleum Tank Release Cleanup Fund was to do more formal strategic planning. He said the DEQ is looking at how it does business and how to do it as efficiently and effectively as it can.
- 00:08:40 Terry Wadsworth, executive director, Petroleum Tank Release Compensation Board (PTRCB), DEQ, gave an update on the Petroleum Tank Release Cleanup Fund and discussed the three priorities of the strategic plan.
- 00:13:01 Mike Trombetta, chief, Hazardous Waste Cleanup Bureau, DEQ, discussed risk and how the agency uses risk in cleaning up sites and said one of the tools used is petroleum mixing zones. He also discussed how the DEQ and the PTRCB are working together as part of the strategic plan. He provided a copy of the snapshot that the EPA requested in its Tier II fund solvency report, [Exhibit 1](#).

Public comment None

Committee questions and discussion

- 00:25:12 Sen. Keane asked if part of the strategic plan is to do more cleanups and less monitoring. Mr. Wadsworth said it is.
- 00:26:10 Sen. Keane asked if there needs to be legislation in order to tie the closing of sites to petroleum mixing zones. Mr. Trombetta said the tools are already in place to do that.
- 00:27:36 Sen. Keane said the legislators who are on the EQC during the next interim need to focus on cleaning up sites and making sure sites are being closed.
- 00:28:07 Rep. Lieser asked if a MEPA analysis is required. Mr. Trombetta said MEPA is a consideration in all of the decisions the department makes and it meets all the functional requirements of MEPA.
- 00:29:17 Mr. Morris commented that Sen. Keane's bill, (HB 613, 2011), to close 90 sites a year set a definite goal for closing sites and pushing things forward. He asked if a large and costly release happens in the future if there is enough capacity in the fund to clean it up, and if not, what would happen. Mr. Wadsworth said if there is a catastrophic release that took a million dollars out of the fund a large portion of the PTRCB revenue would be pushed toward that site and other sites would not be funded.
- 00:31:07 Mr. Morris asked if that would impact the number of closures per year. Mr. Wadsworth said it would.
- 00:31:58 Sen. Brenden said Mr. Morris is on the PTRCB.

SAGE GROUSE MANAGEMENT PLAN UPDATE

- 00:32:32 Tim Baker, natural resource policy advisor, Governor's Office, gave an update on the Greater Sage-grouse management plan and discussed the executive order issued by the governor to keep the management of the Greater Sage-grouse in the hands of the state, [Exhibit 2](#).
- 00:46:19 Jeff Hagener, director, FWP, said the department is working with the Governor's Office to implement the plan. He said the Fish and Wildlife Commission approved cutting back on the sage grouse hunting season and closed hunting in the eastern part of the state. He said FWP is also working in coordination with the ten other states that will be affected if the Greater Sage-grouse is listed as an endangered species.

Public Comment

- 00:49:25 Glenn Marx, executive director, Montana Association of Land Trusts

00:52:41 Dave Galt, executive director, Montana Petroleum Association
00:56:18 Gary Wiens, assistant general manager, Montana Electric Cooperative Association
00:57:32 Janet Ellis, program director, Montana Audubon
00:58:29 Dave Chadwick, executive director, Montana Wildlife Federation
01:01:00 Elena Evans, executive director, Montana Association of Conservation Districts (MACD)
01:02:24 Gary Forrester, representing WBI Energy and MDU Resources

Committee questions and discussion

01:05:08 Sen. Ripley asked about the total cost of the executive order. Mr. Baker said there are two pieces to the executive order, staffing, and the Habitat Conservation Fund for voluntary incentives on private land. He said staffing will cost approximately \$600,000 per fiscal year and said the fund will cost several million dollars.

01:06:40 Sen. Ripley said the EQC will need more details in order to approve funding for the executive order. Mr. Baker said the governor plans on going to the legislature and seeking funding approval through the budget process.

01:08:06 Sen. Ripley said when more details about funding are available it can be looked at before the legislative session. Mr. Baker said they can go through the funding process together and engage the help of the legislature.

01:08:56 Sen. Fielder asked if he anticipates lawsuits despite efforts to keep the sage grouse from being listed. Mr. Baker said there will probably be litigation, but it will be better if there is a plan in place.

01:10:59 Sen. Fielder asked why it is importance to keep management of the species in state hands rather than the federal government. Mr. Baker said it is better and more powerful to give local stakeholders the opportunity to determine how the sage grouse is managed.

01:13:07 Rep. McChesney said the Greater Sage-Grouse Habitat Conservation Advisory Council made sure that the plan would meet any litigation that might be brought forth. He also said because of the way the Endangered Species Act is written the U.S. Fish and Wildlife Service (USFWS) has to look at the entire habitat range which involves 11 western states. He said state management is important because Montana can develop a plan to address issues that are unique to the state.

01:16:47 Sen. Fielder asked why the governor chose to have the press conference before the EQC was given the report. Mr. Baker said the governor wanted to get the report out as quickly as possible.

- 01:18:28 Rep. White asked about the new voluntary incentives for landowners. Mr. Baker said all of the incentives have not yet been determined and said it is a voluntary cooperative program that respects private property rights.
- 01:22:51 Sen. Keane commented on the need for the agencies involved to work together.
- 01:24:06 Sen. Hamlett commented on the importance of having a state plan to manage sage grouse. He said the issue of predation needs to be addressed. Sen. Brenden agreed that predation is a problem.
- 01:29:02 Sen. Brenden asked if a landowner leases land to an oil company that wants to drill a well will the sage grouse plan impede the process. Mr. Galt said it could and will depend on the location of the well and if the property is within the buffer zone of core sage grouse habitat. Sen. Brenden said that will take away private property rights.
- 01:30:39 Rep. McChesney asked what the impact would be for a private landowner if the bird is listed as an endangered species. Mr. Galt said it will require approval by the federal government and consultation with the USFWS and be significantly more cumbersome.
- 01:32:41 Sen. Ripley asked if there will be different jurisdictions if a lawsuit is filed if the sage grouse is listed or not. Mr. Galt said he did not know.
- 01:33:43 Rep. McChesney commented that the plan is a reasonable compromise and hoped that it keeps the sage grouse from being listed.
- 01:34:57 Sen. Hamlett said if the plan goes into effect and the bird population is stabilized and increased, adjustments may be made to lessen the restrictions in the plan.
- 01:35:43 Recess
01:51:09 Reconvene

SJ 4 - STUDY OF VIRGINIA CITY, NEVADA CITY, REEDER'S ALLEY

- 01:51:38 Leanne Kurtz, legislative analyst, LSD, said no changes were made to the SJ 4 bill draft or report and no comments were received during the public comment period, [Exhibit 3](#). She discussed the key features of the bill draft.

Public comment

- 01:53:45 Marilyn Ross, chair, Montana Heritage Commission
01:54:49 John Benedict, Virginia City
01:55:43 Dave Schulz, county commissioner, Madison County
01:57:12 Robert Erdall, mayor, Virginia City
01:58:20 Scott Petersen, president, Virginia City Council
01:59:39 Kirk Belding, Virginia City

02:00:55 John Hamilton, Virginia City

Committee questions and discussion

02:01:37 Rep. White asked Mr. Erdall if the city is satisfied with the amount and benefit it receives from the resort tax. Mr. Erdall said it is.

02:02:48 Sen. Fielder asked about problems with a tour bus operation in Virginia City. Elijah Allen, executive director, Montana Heritage Commission, said the company did get its license and is fully operational.

02:04:47 **Motion:** Sen. Keane moved to approve the SJ 4 report and LC MHC1 as a committee bill.

Discussion:

02:05:06 Sen. Ripley

02:06:17 Sen. Keane

02:06:40 **Vote:** The motion carried unanimously by roll call vote, [Exhibit 4](#). Sen. Keane will sponsor the bill.

ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE UPDATE

02:08:37 Sonja Nowakowski, legislative analyst, LSD, gave an update on the ETIC.

ETIC REQUEST FOR JOINT SUBCOMMITTEE ON EPA CARBON RULE

02:10:00 Ms. Nowakowski discussed the EPA rule, the Clean Power Plan, requiring states to reduce carbon dioxide emissions in the power sector by about 30 percent below 2005 levels by 2030. She said that ETIC is requesting that the 2015-16 EQC consider establishing a subcommittee of EQC and ETIC members to learn more about the proposed rules and to oversee their implementation, [Exhibit 5](#).

02:13:34 Sen. Cliff Larsen, chair, ETIC, discussed the request by the ETIC to form a subcommittee.

Public comment None

Committee questions and discussion

02:17:47 Sen. Ripley asked if the reason for appointing the subcommittee now instead of during the next interim is because of funding. Ms. Nowakowski said it is so that Legislative Council can anticipate the need and budget for it.

02:19:18 Sen. Ripley asked if EQC does not take action now if funding will need to come from the EQC and the ETIC. Ms. Nowakowski said it will.

- 02:19:48 Sen. Hamlett asked when the first meeting of the subcommittee will take place. Sen. Brenden said the planning process will take place in September.
- 02:20:01 Ms. Nowakowski said the first meeting wouldn't take place until July after the start of the next fiscal year when the money becomes available.
- 02:20:15 Sen. Hamlett asked if former members of the EQC could be on the subcommittee.
- 02:20:56 Sen. Brenden commented on the number of boards and commissions.
- 02:22:08 Sen. Keane said he supports taking action now to form the subcommittee.
- 02:24:06 Sen. Ripley said he also supports taking action now since it plans ahead and will preserve the budgets for the EQC and the ETIC.
- 02:24:58 Sen. Brenden said he supports appointing the subcommittee now, but is concerned about the number of boards and commissions.
- 02:25:27 Rep. Court said she is also concerned about the number of boards and commissions. She asked if the EQC votes to create the subcommittee will it already be established before the 2015 Legislative Session. Mr. Kolman said the Legislature's input will be during the budgeting process.
- 02:26:12 Rep. Court asked if the carbon rules will also include the study of climate change. Ms. Nowakowski said she did not think it would.
- 02:27:45 Sen. Hamlett said he supports forming a subcommittee.
- 02:28:19 **Motion:** Sen. Ripley moved to approve the formation of a joint subcommittee between the EQC and the ETIC on the EPA rule on the Clean Power Plan.

Discussion:

- 02:28:45 Sen. Fielder
02:28:50 Sen. Ripley
- 02:29:05 **Vote:** The motion carried unanimously by voice vote.

HB 609 - STUDY OF FWP HUNTING AND FISHING LICENSES

- 02:29:49 Ms. Stockwell, provided copies of the new Dingell-Johnson Act funding brochure, [Exhibit 6](#).
- 02:32:09 Ms. Stockwell discussed the HB 609 draft study report and bill draft, LC 4444, [Exhibit 7](#). She also discussed the public comments that were received, [Exhibit 8](#).

02:36:50 Mr. Hagener discussed the FWP budget and the impact to the department if the license fee increase is not passed by the legislature.

Public comment

02:47:26 Joe Perry, Montana Sportsmen Alliance (MSA)
02:48:45 Debby Perry, Brady
02:50:42 John Borgreen, Russell Country Sportsmens Association
02:51:42 Nick Gevock, Montana Wildlife Federation
02:53:19 Jerry Davis

Committee questions and discussion

02:54:15 Rep. White asked how the cost of federal government mandates affects the state and the department's ability to manage. Mr. Hagener said it affects the agency significantly.

02:57:37 Rep. White asked if there is federal funding available for federal mandates. Mr. Hagener said there is some funding available, but not enough.

03:00:15 Sen. Hamlett asked if there was ever a time when FWP was unable to match funding it received from Pittman-Robertson. Mr. Hagener said there has been. He said FWP has two years to allocate the money before it reverts back to the federal government.

03:01:22 Sen. Keane thanked the Fish and Wildlife Licensing and Funding Advisory Council for its work on the plan and commented on the four-year funding cycle and assault rifles. He said he supports the proposal.

03:05:01 Sen. Ripley also thanked the advisory council for its work, but said he does not support the bill draft.

03:07:28 Mr. Aspenlieder commented on why he does not support the proposal.

03:11:10 Rep. McChesney said he agrees with some of the comments that were made on how FWP has spent money in the past, but said he supports the draft report and bill draft because of overwhelming public support.

03:13:27 Sen. Vuckovich said he supports the bill draft because he believes it is what the people of Montana want and thanked the advisory council for its work.

03:15:04 Sen. Fielder commented on the impact that environmental interest groups have on the state's budget.

03:16:50 Sen. Brenden commented on assault rifles and discussed why he does not support the bill draft.

03:20:10 **Motion/Vote:** Sen. Keane moved to approve LC 4444 as a committee bill. The motion carried 9-7 by roll call vote. Rep. Bennett, Rep. White, Sen. Fielder, Sen. Ripley, Sen. Brenden, Mr. Aspenlieder, and Mr. Busby voted no, [Exhibit 9](#). If Rep. Welborn is not reelected, Sen. Hamlett will sponsor the bill.

DEVOLUTION OF CANADA LANDS TO NW TERRITORIES

03:22:35 Sen. Brenden gave an introduction and provided background information on the devolution of Canada lands.

03:25:07 Sen. Brenden asked Martin Goldney, chief negotiator, Government of the Northwest Territories, via phone, if he was the chief negotiator for the government of the Northwest Territories on the devolution of lands and resources. Mr. Goldney said he was.

03:25:34 Sen. Brenden asked how long it took for the negotiations. Mr. Goldney said the most recent round of devolution negotiations started in 2002 and concluded in 2012.

03:26:06 Sen. Brenden asked if the Yukon Territory had gone through devolution by the time the Northwest Territories started. Mr. Goldney said the Yukon Territory was just concluding its negotiations and beginning implementation when the Northwest Territories started negotiations.

03:26:25 Mr. Goldney discussed the devolution of the Northwest Territories, the transfer of province-like authority to its government, and some of the challenges.

03:38:58 Sen. Brenden asked if the Northwest Territories and Canada make joint control decisions. Mr. Goldney said some of the environmental regulations are done jointly, but the bulk of the decisions are territorial government decisions.

03:40:23 Sen. Brenden asked about revenue sharing between the Northwest Territories and Canada and if it is subject to a cap. Mr. Goldney said there is revenue sharing and explained.

03:41:29 Sen. Brenden asked if there are still transfer payments coming in from the federal government of Canada. Mr. Goldney said there are.

03:42:18 Sen. Brenden asked about the agreement with the Canadian government on liabilities before the Northwest Territories assumed control of the land. Mr. Goldney said the general rule is if the liability was created when Canada had control the federal government assumes that liability and continues to be responsible for the cleanup.

03:44:42 Sen. Brenden asked if there are any shared liabilities. Mr. Goldney said there are and gave some examples.

03:46:19 Sen. Brenden asked if First Nations people get 25% of the resource revenue. Mr. Goldney said they do receive 25% of the resource revenue that the government of the Northwest Territories shares with the federal government.

Committee questions and discussion

03:47:46 Sen. Keane asked if the Northwest Territories are responsible for complying with all environmental regulations of Canada and the Northwest Territories in permitting new projects. Mr. Goldney said yes.

03:49:01 Sen. Keane asked about funding for new jobs that were transferred to the Northwest Territories. Mr. Goldney said as part of devolution negotiations an additional amount of money was negotiated to pay for employees and for the operations required as land managers.

03:50:51 Sen. Keane asked if protection of the land in the Northwest Territories has increased. Mr. Goldney said yes.

03:51:42 Sen. Hamlett asked if Canada always retains a percentage of the mineral royalties. Mr. Goldney said it does as long as the Northwest Territories are still receiving transfer payments from the Canadian government.

03:52:29 Sen. Hamlett asked if most of the mineral rights are owned by the federal government. Mr. Goldney said they are.

03:53:59 Sen. Hamlett asked if the Indian Reserves in Canada own the mineral rights. Mr. Goldney said they do not.

03:55:57 Mr. Aspenlieder asked if resource production on the transferred land covers the cost of management of the land. Mr. Goldney said it does and that there are two sources of money.

03:59:10 Mr. Aspenlieder asked if they took away the payment the Northwest Territories receives from the Canadian government would they still be able to cover their management cost and do the projects they are planning to do in the next decade. Mr. Goldney said they hope to be able to.

04:01:07 Sen. Fielder asked if management activities, since the transfer, are oriented to environmental health and recreational access or strictly resource production. Mr. Goldney said it is fairly balanced between the two.

04:02:42 Sen. Fielder asked if there was opposition to devolution when discussions first started. Mr. Goldney said there was strong support from the government of the Northwest Territories as it was a long standing policy objective. He said there was some resistance from the aboriginal governments that hadn't yet resolved their land claim. He said there was some opposition from the federal government.

- 04:06:37 Rep. Welborn asked if there is still a homestead act in the Northwest Territories. Mr. Goldney said there is not.
- 04:07:41 Sen. Brenden thanked Mr. Goldney for his participation.
- 04:09:23 Recess
- 05:29:06 Reconvene

SJ 15 - STUDY OF FEDERAL LAND MANAGEMENT

- 05:29:33 Mr. Kolman discussed the public comments that were received on SJ 15, [Exhibit 10](#), and the draft report, [Exhibit 11](#).
- 05:33:21 Sen. Brenden said he is putting in a bill draft that anyone giving public comment must include their name and address.

Public comments

- 05:34:42 Dan Happel, county commissioner, Madison County
- 05:36:33 John Gatchell, conservation director, Montana Wilderness Association
- 05:47:21 Julia Altemus, executive vice president, Montana Wood Products Association (MWPA)
- 05:49:40 Neal Ullman, Montana Conservation Voters
- 05:52:04 John Borgreen, Russell Country Sportsmens Association
- 05:53:18 Joe Perry, MSA

Committee questions and discussion

- 05:54:10 Rep. Lieser said there was not consensus by the working group in the development of the study matrix and recommended that the EQC move forward with recommendations and findings 1, 6, 8, 9, 10 and 11 modified. He provided a copy of the findings and recommendations he submitted to the working group that were not included in the draft report, [Exhibit 12](#).
- 06:04:38 Sen. Keane asked if a motion was made.
- 06:04:47 **Motion:** Rep. Lieser moved to include the findings and recommendation he submitted into the SJ 15 report and to include the comments made by the U.S. Forest Service (USFS) and to amend recommendation 11 to remove "until all other options are investigated".

Discussion:

- 06:05:28 Sen. Ripley asked if Rep. Lieser would consider a friendly amendment to add "failure to log" under finding number 2 that he submitted. Rep. Lieser said he would.

06:06:15 Sen. Ripley asked if Rep. Lieser would consider a friendly amendment to add "and increased logging" after supporting renewable energy sources under the last recommendation he submitted. Rep. Lieser said he would.

06:06:39 **Motion:** Sen. Ripley made a substitute motion to add, under finding number 2, "failure to log" after decades of fire suppression, and on the last recommendation, to add "and increased logging" after renewable energy sources.

Discussion:

06:07:27 Rep. McChesney

06:07:47 Rep. White

06:08:22 Sen. Brenden

06:08:51 Rep. White

06:08:55 Sen. Brenden

06:09:03 Mr. Kolman said Sen. Ripley's substitute motion includes the motion made by Rep. Lieser.

06:09:36 Sen. Brenden

06:09:43 Rep. White

06:09:54 Sen. Brenden

06:10:08 Sen. Ripley restated the substitute motion.

06:10:43 Sen. Hamlet

06:11:48 Mr. Kolman

06:12:22 Rep. Lieser

06:12:27 Mr. Kolman clarified the two comments that were made by the USFS that are included in Rep. Lieser's motion.

06:13:04 Rep. Lieser

06:13:16 Sen. Brenden

06:14:49 Sen. Ripley

06:15:01 Ms. Fitzpatrick

06:15:12 Sen. Brenden

06:15:15 Ms. Fitzpatrick

06:15:27 Sen. Brenden

06:15:31 Mr. Kolman said Sen. Ripley's substitute motion includes Rep. Lieser's motion.

06:15:46 Sen. Ripley

06:15:58 Mr. Kolman said the substitute motion incorporates Rep. Lieser's motion.

06:16:30 **Vote:** The motion failed 8-8 by roll call vote. Rep. Bennett, Rep. Welborn, Rep. White, Sen. Fielder, Sen. Ripley, Mr. Aspenlieder, Mr. Busby, and Sen. Brenden voted no, [Exhibit 13](#).

06:17:34 Sen. Keane said that without including Rep. Lieser's recommendations in the study report he will not be able to support it.

06:18:23 **Motion/Vote:** Sen. Fielder moved to incorporate Rep. Lieser's recommendations as amended by Sen. Ripley without altering number 11. The motion carried 9-7 by roll call vote with Rep. Court, Rep. Lieser, Sen. Keane, Sen. Vuckovich, Ms. Fitzpatrick, Mr. Morris, and Rep. McChesney voting no, [Exhibit 14](#).

Discussion:

06:20:09 Sen. Hamlett
06:24:28 Sen. Brenden

06:24:46 **Motion/Vote:** Sen. Keane moved to change, on recommendation number 1 of the study report, "shall" to "should consider establishing". The motion carried unanimously by voice vote.

Discussion:

06:25:21 Rep. White
06:28:02 Rep. Bennett
06:29:00 Mr. Aspenlieder

06:31:53 **Motion:** Sen. Hamlett moved to take number 11 out of the recommendations on the study report.

06:32:15 Mr. Kolman read recommendation 11.

Discussion:

06:32:26 Sen. Fielder
06:33:30 Sen. Keane
06:33:36 Sen. Brenden

06:34:45 **Vote:** The motion carried 15-1 by roll call vote. Sen. Brenden voted no, [Exhibit 15](#).

06:35:40 **Motion:** Sen. Fielder moved to approve the SJ 15 report as amended.

Discussion:

06:35:54 Sen. Keane
06:39:05 Sen. Hamlett

06:39:27 **Vote:** The motion carried 14-2 by roll call vote. Rep. Court and Ms. Fitzpatrick voted no. [Exhibit 16](#).

PUBLIC COMMENT ON ANY MATTER NOT CONTAINED IN THIS AGENDA AND THAT IS WITHIN THE JURISDICTION OF THE EQC

None

REVIEW OF AGENCY LEGISLATIVE PROPOSALS

06:40:45 Mr. Kolman explained that the agencies the EQC has oversight over will be presenting their proposals for legislation in order to seek approval to have their ideas pre-drafted into bills. He said if the EQC approves the proposals, it will allow the bills to be introduced at the beginning of the legislative session.

Department of Natural Resources and Conservation

06:44:07 John Tubbs, director, DNRC, discussed the proposed legislation from the DNRC, [Exhibit 17](#).

Committee questions and discussion

- 06:59:45 Sen. Brenden asked how the proposed legislation revising assessments on owners of classified forest land will affect logging companies and if the DNRC has estimated the amount of money that will be generated. Bob Harrington, administrator, Forestry Division, DNRC, explained how the companies will be affected. He said Ms. Altemus will explain the fiscal note during public comment.
- 07:01:18 Sen. Brenden asked about the fiscal note for the proposal to extend and modify the water adjudication account. Mr. Tubbs said if it is done as a one-time transfer to the adjudication account it will be around \$14 million to bring it to termination. He said if it is done as a base budget adjustment it will be about \$2.5-3 million for the biennium.
- 07:02:01 Sen. Brenden asked if under legislation for the cabin and home site sales, DNRC is going to incorporate having the lessee pay for the appraisal rather than the state. Mr. Tubbs said the current draft includes a voluntary provision to amend the statute so if a lessee wants to speed up their process they can choose to pay for those costs.
- 07:03:15 Sen. Brenden asked if the proposed legislation involving trespass uses of school trust land precludes public camping. Mr. Tubbs said it does not. Shawn Thomas, administrator, Trust Land Management Division, DNRC, explained the legislation.
- 07:05:51 Sen. Keane asked about proposed legislation under the conservation and resource development division for conservation districts. Mr. Tubbs said the legislation cleans up procurement statutes.
- 07:06:39 Sen. Keane asked if it includes prevailing wage. Mr. Tubbs said under Montana law DNRC will comply with prevailing wages, but he did not think it was a specific provision of the bill.

- 07:06:57 Sen. Keane asked for clarification regarding water adjudication fees paid by some individuals, but not others, and asked for clarification regarding the fiscal note for water adjudication. Mr. Tubbs said exercising the fee only lasted one legislative session. He said the \$14 million is a one-time revenue transfer method of funding the proposal and the \$2.5-3 million is what would be needed to appropriate as a base fund adjustment to the court and to the DNRC to fund the FTE's in the current operation.
- 07:09:53 Sen. Keane asked if employees have already been transferred from the DNRC to the water court. Mr. Tubbs said they have been and they will continue to do so as their work gets done.
- 07:10:51 Sen. Keane asked if they are moving from water adjudication to funding the water court to get the process done. Mr. Tubbs said water adjudication is a two part process by both the DNRC and the water court. He said the DNRC is responsible for examination and the water court has the responsibility for the actual adjudication and decrees.
- 07:11:28 Sen. Keane asked if there will be an effort to increase the sale of cabin sites. Mr. Tubbs said with the direction given by the EQC this interim the DNRC may have the resources to do that.
- 07:13:50 Sen. Keane asked if the DNRC leases water anywhere. Mr. Tubbs said there is a new provision that was put out last year that allowed the lease of water rights.
- 07:14:35 Sen. Keane asked about the number of leases the DNRC has in that program. Mr. Tubbs said the purchase of water is not sold through the DNRC. He said the agency works with one entity and there are many members that buy water from that entity.
- 07:15:00 Rep. Bennett asked if under the proposed legislation cabin and home site sale lessees will be allowed to fund necessary surveys and appraisals which will move them up on the list. Mr. Thomas said it will.
- 07:16:42 Sen. Brenden said there needs to be a provision in the bill that reimburses the leaseholder for the cost they paid for the survey and appraisal in cases where a competitive bidder got the lease. Mr. Thomas said the DNRC anticipates the bill will include that provision.
- 07:17:19 Sen. Hamlett asked if the CSKT compact is not passed by the legislature will there need to be an extension of time and additional money needed to process the additional water adjudication claims. Mr. Tubbs said the adjudication account does not contemplate that action.
- 07:20:55 Sen. Ripley asked if the proposed legislation amending liability for unauthorized construction of improvements addresses the problem of foreclosure on construction of a business or home on a state lease and if the bank will be liable. Mr. Tubbs said he did not believe it is a provision in the proposed legislation.

- 07:22:49 Sen. Ripley asked if the definition of excusable neglect is in the statute. Mr. Tubbs said it is not defined in law, but it is the lowest legal standard they can apply.
- 07:23:28 Sen. Fielder said if the CSKT compact is not approved the attorney general is not precluded from defending the rights of Montanans if there was a large claim by the tribe.
- 07:25:33 Sen. Hamlett commented on claims that could be made on land owned by the tribe.
- 07:26:35 **Motion/Vote:** Sen. Keane moved to approve initial drafting of legislation proposed by the DNRC. The motion carried unanimously by voice vote.

Department of Environmental Quality

- 07:27:08 Tracy Stone-Manning, director, DEQ, discussed the proposed legislation from DEQ, [Exhibit 18](#).

Public comment None

Committee questions and discussion

- 07:34:33 Rep. White asked how many government agencies are involved in one petroleum tank release cleanup site. Ms. Stone-Manning said it depends because it is site specific.
- 07:37:25 Rep. White asked about proposed legislation to amend the Controlled Allocation of Liability Act (CALA) to expand the use of the orphan share fund and how that money will be used to collect data. Ms. Stone-Manning said the list of contaminated sites was put together in the 1970s and the DEQ needs to sample the sites one last time to determine if they should still be on the list.
- 07:38:45 Rep. White asked if the DEQ is currently unable to use the orphan share fund to go back and cleanup those sites. Ms. Stone-Manning said not for the number of sites it wants to check.
- 07:39:17 Rep. White commended the department on legislation to repeal 75-5-302.
- 07:39:39 Mr. Busby asked if the intent of proposed legislation for the creation of Brownfields fund is to cover the entire state or just the 25 counties. Ms. Stone-Manning said DEQ would like to use the program to leverage existing work.
- 07:41:02 Sen. Hamlett asked, on behalf of Rep. Williams, vice chair of WPIC, why DEQ did not participate in the State Water Plan. Ms. Stone-Manning said DEQ did participate.

- 07:41:48 Sen. Keane said he and Sen. Brenden had a meeting yesterday with DEQ. He said they will take part in amending CALA and expanding uses for the orphan share fund. Sen. Brenden also commented on the meeting and working with the DEQ, the governor's office, and the legislature on the orphan share fund.
- 07:43:43 **Motion/Vote:** Rep. McChesney moved to approve initial drafting of the legislation proposed by the DEQ. The motion carried unanimously by voice vote.

Public comment on DNRC legislative proposals

- 07:44:17 Ms. Altemus, MWPA
07:46:34 Ms. Evans, MACD

OTHER BUSINESS

- 07:47:58 Mr. Hagener said Jim Kropp, chief, Law Enforcement Division, FWP, brought the rifles purchased by FWP, to show the EQC, at Chairman Brenden's request and Sheila Hogan, director, Department of Administration (DOA), is present to answer questions about the procurement process used to obtain the rifles.
- 07:48:54 Mr. Kropp discussed the weapons purchased by FWP as well as incidents wardens have had pertaining to officer safety and working with other law enforcement agencies, [Exhibit 19](#).
- 08:08:45 Mr. Aspenlieder asked if FWP followed the procurement process when it purchased the rifles and if the purchases went through the DOA. Ms Hogan said the procurement bureau is part of the DOA and deferred the question to Jodi Gollehon, senior administrative officer, State Procurement Bureau, DOA. Ms. Gollehon described the procurement process and the requisition from FWP for the rifles.
- 08:14:11 Sen. Brenden asked when FWP contacted the EQC regarding the purchase of the rifles. Mr. Kolman said he would find out.
- 08:14:36 Sen. Brenden asked if the game wardens or the game warden association was in favor of purchasing the rifles. Mr. Kropp said it was a recommendation from wardens on the Firearms Committee.
- 08:14:51 Sen. Brenden asked who appointed the committee. Mr. Kropp said the committee is made up of volunteers.
- 08:15:17 Sen. Brenden said the game warden union and the game warden association did not endorse the purchase of the rifles. Mr. Kropp said they did not, but the association does not get involved in the replacement of existing items.
- 08:15:57 Sen. Brenden asked how many rifles were purchased. Mr. Kropp said they purchased 113 rifles.

- 08:16:03 Sen. Brenden commented on the lack of communication between FWP and EQC in purchasing the rifles. Mr. Kropp explained the process for purchasing the rifles.
- 08:18:13 Sen. Brenden thanked Mr. Kropp for bringing the rifles to the EQC.
- 08:18:34 Mr. Kolman said the EQC asked FWP about the rifles at the May 15 meeting.
- 08:18:40 Sen. Brenden asked when the rifles were purchased. Ms. Gollehon said the purchase order was issued on May 12.
- 08:19:28 Sen. Keane said he is concerned about the purchase of the rifles and the lack of communication. Mr. Kropp said FWP does not usually get approval from the EQC for other equipment purchases.
- 08:22:56 Sen. Hamlett asked if game wardens have ever come across any meth labs or marijuana growing operations in their normal duties. Mr. Kropp said they have encountered both.
- 08:23:31 Rep. White discussed a letter he received from one of his constituents regarding FWP firearm training on August 11-12, [Exhibit 20](#).
- 08:25:16 Sen. Ripley asked if purchase of the rifles was ever discussed in the subcommittee meeting during the legislative session. Sen. Brenden said he did not think the guns were discussed.
- 08:26:23 Sen. Hamlett commented on law enforcement encounters with illegal substance growing operations.
- 08:27:36 Mr. Hagener asked if all the purchases that FWP makes need to go through the EQC. Sen. Brenden said they do not.

Department of Fish, Wildlife and Parks

- 08:28:56 Mr. Hagener discussed the proposed legislation from FWP, [Exhibit 21](#), and a legislative proposal that is being discussed by the Private Land/Public Wildlife Council (PL/PW), [Exhibit 22](#).

Public comment None

Committee questions and discussion

- 08:39:03 Rep. Bennett asked in regards to the proposed legislation on the automatic loss of hunting and trapping privileges how many incidents happen on an annual basis. Mr. Kropp said he can send the information to the EQC.

- 08:41:10 Rep. Court asked if the proposed legislation for a dock on Wild Horse Island was a suggestion from the Montana State Parks and Recreation Board and if the board is also looking at making the trails, picnic sites, and tent sites handicap accessible. Mr. Hagener said the suggestion was made by the board and its intent is only to make a safer dock.
- 08:42:43 **Motion/Vote:** Rep. Court moved to approve initial drafting of legislation 1-6 as proposed by FWP. The motion carried 11-5 by roll call vote with Sen. Keane, Sen. Ripley, Sen. Brenden, Mr. Aspenlieder, and Mr. Busby voting no. Rep. Welborn voted by proxy, [Exhibit 23](#).

STATE ASSUMPTION OF DREDGE AND FILL PERMIT PROGRAM

- 08:44:27 Mr. Kolman provided information about the state assuming control of administering permits for dredge and fill activities regulated by the federal government under Section 404 of the Clean Water Act (CWA), [Exhibit 24](#).

Public comment None

Committee questions and discussion

- 08:54:28 Mr. Busby asked if the EPA and the U.S. Army Corp of Engineers will fund the program if the state takes it over. Mr. Kolman said they will not.
- 08:54:57 Sen. Fielder asked if the EQC registered a comment on the CWA rule . Mr. Kolman said it did not. Sen. Fielder said the EQC should consider it. Sen. Brenden agreed.
- 08:55:39 Sen. Brenden commented on the advantage if the state has control and asked the EQC members to prepare comments on the CWA.
- 08:56:46 Mr. Kolman said the agenda item that was noticed was the study resolution and the state assumption of the dredge and fill permit program. He said that individual members of the EQC can submit comments on the CWA, but since it wasn't noticed as an action item the EQC cannot register a comment.
- 08:57:05 Sen. Keane said he has not heard of any problems with the 404 permit program and asked about the cost for the state to assume control.
- 08:57:56 Sen. Hamlett explained why he brought forward the idea of the state assuming administration of the 404 permit program and why it is worth the study. Sen. Brenden agreed.
- 08:59:57 Sen. Ripley said the new rule on the CWA could impact the number of permits required and is a serious problem.

- 09:00:45 Rep. Court asked why the issue is being brought before the EQC instead of the WPIC. Mr. Kolman said the two interim committees can decide where it should be considered.
- 09:01:28 Sen. Brenden said he did talk with the chairman of the WPIC regarding duplicate jurisdiction in regard to the CSKT compact. He said the EQC can still have oversight, but it does not need to duplicate the same issues as WPIC.
- 09:02:10 Sen. Hamlett said EQC should be involved in the 404 permit program because it supervises DEQ and it will need to be involved.
- 09:02:28 Sen. Brenden thanked EQC members and staff for their work.
- 09:03:16 Sen. Hamlett asked if the EQC needs to decide whether to move forward with the study resolution. Sen. Brenden asked if the EQC can move the resolution forward and bind the next interim committee. Mr. Kolman said it will be an EQC sponsored bill that will go to the legislature to vote on.
- 09:03:58 **Motion/Vote:** Sen. Hamlett moved to advance the study resolution and make it an EQC bill so that it can go before the legislature. The motion carried unanimously by voice vote.
- 09:04:43 Sen. Brenden adjourned the meeting at 5:07 p.m.

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