



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 11, 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

SCOTT ASPENLIEDER
DEXTER BUSBY
MARY FITZPATRICK
ROY MORRIS

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) voted 16-0 to approve the HB 609 study report including publication of the Dingell-Johnson brochure.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Brenden called the meeting to order at 8:08 a.m. The secretary called the roll, [Attachment 3](#).

AGENDA

BISON MANAGEMENT UPDATE

00:01:17 Martin Zaluski, state veterinarian, Department of Livestock (DOL), gave an update on bison management and the main issues they are working on.

00:05:53 Jeff Hagener, director, Department of Fish, Wildlife, and Parks (FWP), discussed tribal hunts, the quarantine feasibility study for bison residing on the Green Ranch, and the statewide Environmental Impact Statement (EIS) process.

Public comment None

Committee questions and discussion

00:10:16 Rep. White asked about the target number of bison in the park. Mr. Zaluski said the number hasn't been determined.

- 00:11:19 Rep. White asked how the park plans to reduce the number of bison. Mr. Zaluski said it uses three methods to reduce population: winter kill, hunting, and shipment to slaughter from the capture facility.
- 00:12:11 Rep. White asked if the joint Environmental Assessment (EA) will include the current partnership with the Interagency Bison Management Plan, and its partners, and Idaho as a cooperative agency. Mr. Zaluski said the EA will dovetail onto the current EIS. He said the new bison EIS will include the current partners and the state of Idaho as a cooperating agency.
- 00:13:55 Rep. White asked about other diseases, besides brucellosis, that are dangerous and could be potential problems. Mr. Zaluski said there are other diseases that can be transmitted from animals to other animals or people, but brucellosis is the primary focus.
- 00:16:16 Rep. White asked when FWP plans to hire a new supervisor for District 3. Mr. Hagener said its goal is to have someone hired by mid-November.
- 00:17:16 Rep. White asked about the five applications that have been submitted for the bison on the Green Ranch and if the state will be compensated for the bison. Mr. Hagener gave the names of the applicants and said the bison are considered state public trust.
- 00:20:47 Rep. White asked when FWP will make a decision on where the bison on the Green Ranch will go. Mr. Hagener said it plans to have a decision made by early November.
- 00:21:58 Sen. Ripley asked if once bison come out of the park they belong to the state of Montana. Mr. Hagener said they become public trust by the state.
- 00:22:34 Sen. Ripley asked at what point the bison that are taken out of the wild and put into captivity become wild versus livestock. Mr. Hagener said in the case of the bison at Fort Belknap the district court ruled they are still wild regardless of their confinement in captivity.
- 00:23:55 Sen. Hamlett asked if blood samples are collected from animals that are hunted. Mr. Zaluski said he did not believe samples were collected from either bison or elk in the greater Yellowstone area for brucellosis.
- 00:24:41 Sen. Hamlett asked if blood samples would be valuable information to have in order to determine the extent of brucellosis in the population. Mr. Zaluski said there is a strong understanding of the level of disease based on sampling that has been done over the last decade. He said there is limited value in sampling bison carcasses from a hunter blood kit.
- 00:27:12 Sen. Hamlett asked if there is a downward trend in brucellosis. Mr. Zaluski said the level of brucellosis in park bison has remained unchanged.

- 00:27:47 Rep. Court asked if the state can recover the value of bison that are given to zoos or other entities and for the cost to transport the bison. Mr. Hagener said FWP does not pay the transportation cost. He said FWP has traded animals with other states.
- 00:29:38 Rep. Court asked if animals that are given to zoos are returned. Mr. Hagener said probably not, but they do have a retainer. He said zoos have been the starter place for some of the herds that have gone elsewhere.
- 00:30:32 Rep. Welborn asked if brucellosis is lethal to moose. Mr. Hagener said he did not know. Mr. Zaluski said brucellosis is severely debilitating to moose and can lead to death.
- 00:32:44 Sen. Hamlett asked if a bison dies a natural death and ends up in a stream if there is any concern that brucellosis will contaminate the stream. Mr. Zaluski said it has not been studied.
- 00:34:42 Sen. Hamlett asked if FWP or the state can hold public auctions on state public trust property. Mr. Hagener said he did not know.
- 00:35:25 Sen. Brenden asked if FWP met with the Blackfoot tribe to get some of the Yellowstone bison. Mr. Hagener said he was not aware of it. Sen. Brenden asked Mr. Hagener to find out and let him know.
- 00:37:45 Sen. Brenden asked FWP and DOL to keep the EQC informed on the transfer of bison.

AQUATIC INVASIVE SPECIES PROGRAM UPDATE

- 00:38:10 Linnaea Schroeer, aquatic invasive species specialist, FWP, discussed the cost to remove aquatic invasive species (AIS) and gave an update on the statewide monitoring effort, [Exhibit 1](#). She also gave an update on watercraft inspection stations, [Exhibit 2](#).

Public comment None

Committee questions and discussion

- 00:46:08 Rep. Lieser asked how the Montana Department of Transportation (MDT) is involved in the AIS program. Ms. Schroeer said AIS is brought into the state primarily by trailered watercraft. She said FWP receives notification from MDT of all commercial watercraft and oversized watercraft that need a permit to enter the state and officers sometimes inspect the boats adding another layer of protection. She said inspection stations often operate on MDT property.
- 00:49:13 Rep. Lieser asked if MDT is being funded for its participation in the program. Ms. Schroeer said it is not.

- 00:49:27 Rep. Lieser asked if dogs are being used to detect AIS. Ms. Schroeer said there is a program called Working Dogs for Conservation, but FWP is not actively involved in the program.
- 00:51:56 Sen. Fielder asked if there has been any progress in finding the point source of the quagga mussels contained. Ms. Schroeer said there is no move to eradicate zebra or quagga mussels.
- 00:54:24 Sen. Fielder asked if there have been any advances in eradicating the mussels once they are established. Ms. Schroeer said there is work going on, but there isn't a good method of eradication that is economically feasible.
- 00:56:22 Rep. White asked about FWP's working relationship with Idaho. Ms. Schroeer said FWP has a good working relationship with all of the western states including Idaho.
- 00:58:29 Rep. White asked about contamination through fishing equipment. Ms. Schroeer said AIS can be transferred by fishing equipment and FWP does public outreach to educate fisherman.

STATUTORY ADMINISTRATIVE RULE REVIEW

- 01:01:10 Helen Thigpen, staff attorney, Legislative Services Division (LSD), discussed the rule review memo, [Exhibit 3](#).
- 01:02:39 Sen. Brenden asked to be kept informed about the meeting on Sept. 24 regarding new rules on the underground storage tank program.
- 01:02:55 Ms. Thigpen continued her presentation.

Public comment None

Committee questions and discussion None

WATER POLICY INTERIM COMMITTEE UPDATE

- 01:04:54 Jason Mohr, research analyst, LSD, gave an update from the September 8-9 Water Policy Interim Committee (WPIC) meeting.

Committee questions and discussion

- 01:08:40 Sen. Ripley asked about the plan to expand the oversight of the WPIC. Mr. Mohr said statute directs that EQC has oversight over the DNRC. He said WPIC is requesting oversight over water policy in order to prevent duplication.
- 01:09:45 Joe Kolman, legislative environmental analyst, LSD, explained the statutes and how expanding the oversight of WPIC will affect the EQC.

- 01:13:32 Rep. White asked about deficiencies found by the Confederated Salish and Kootenai Tribe (CSKT) technical working group in the water model used by the tribe for the water use agreement. Mr. Mohr explained some of the deficiencies.
- 01:16:58 Rep. White asked if the model used by the tribe was a good model to use for planning purposes, but was not sufficient for operational application. Mr. Mohr agreed and said there is a lot of information needed to practically run the irrigation project.
- 01:19:01 Sen. Fielder provided her perspective on the water compact.
- 01:21:56 Sen. Hamlett commented on the amount of information that has been received on the water compact.
- 01:24:05 Sen. Brenden asked if anyone has been assigned to carry the bill changing oversight of water policy from the EQC to the WPIC. Mr. Mohr said WPIC has not made the assignment yet.
- 01:24:21 Sen. Keane commented on the shortfall in agency budgets and the lack of groundwater monitoring.
- 01:25:05 Recess
01:42:34 Reconvene

STATE WATER PLAN UPDATE

- 01:42:48 Tim Davis, administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC), gave an update on the draft State Water Plan, [Exhibit 4](#), and the schedule for public hearings, [Exhibit 5](#).

Public comment

- 01:48:34 Jim Beck, Broadwater Conservation District, Upper Missouri Basin Advisory Council
- 01:52:01 Lorents Grosfield
- 01:58:35 Krista Lee Evans, Association of Gallatin Agricultural Irrigators
- 02:03:21 Mike Murphy, Montana Water Resources Association

Committee questions and discussion

- 02:04:28 Sen. Ripley asked what the DNRC is doing to address public concerns. Mr. Davis said they will be addressed before the water plan is finalized.
- 02:05:06 Sen. Ripley asked to be provided with documentation on how concerns are addressed.

- 02:05:19 Sen. Hamlett asked Mr. Grosfield how the rule changing the definition of "waters of the U.S." will affect Montana and the State Water Plan. Mr. Grosfield said it will depend on the definition and how it is implemented.
- 02:08:08 Mr. Busby asked what DNRC's perspective is on how the change in the definition of "waters of the U.S." will affect Montana and the State Water Plan. Mr. Davis said it will depend on how the federal agencies apply the definition and how it relates to the U.S. Army Corps of Engineers.
- 02:08:48 Mr. Aspenlieder asked about the long-term purpose of the State Water Plan. Mr. Davis said the purpose of the water plan is to carry out the 2009 legislative mandates and to prioritize existing resources and where they should be used.
- 02:12:07 Mr. Aspenlieder said irrigation districts will use the water plan to be more competitive with municipalities for state dollars and grant funding. Mr. Davis said they hope people will use what they can out of the plan.
- 02:14:11 Sen. Hamlett asked if the EPA rule on the definition of "waters of the U.S." is very broad in nature and thereby intrusive to the state of Montana, what can and should the legislature do. Mr. Grosfield said there should be opportunities to work with the EPA and the Corps to be reasonable in what they are doing.
- 02:16:10 Sen. Hamlett asked if the rule is an issue for both the western states and the eastern states. Mr. Grosfield said because of the difference in climate it will affect the west more than it will affect the east.
- 02:17:17 Sen. Hamlett asked if the state constitution where it states "all the waters that fall and flow within the boundaries of the state belong to the state for the beneficial use of its citizens" will hold up in a court case against the rule. Mr. Grosfield said the federal constitution overrides the state constitution, but he didn't think there is anything in the federal constitution specifically about water.
- 02:18:11 Sen. Fielder said it is usually not good when the federal government asserts more and more control over state resources. She said better decisions are made when they are done locally and we need to think about transferring management responsibilities to the state.
- 02:19:20 Sen. Brenden said the DNRC works for Montanans and needs to protect and fight for Montana rights. He said if the EPA takes a broad stance regarding the rule it will take away private property rights.

FIRE SEASON UPDATE

- 02:23:28 Bob Harrington, administrator, Forestry Division, DNRC, gave an update by phone on the fire season.

Public comment None

Committee questions and discussion

- 02:26:48 Rep. Lieser asked if the DNRC is using any of the money saved this year in fire suppression for fuel reduction. Mr. Harrington said the governor has approved using \$3 million out of the fire suppression account for projects.
- 02:28:54 Rep. Lieser asked if some of the money will be used for rural fire departments. Mr. Harrington said \$500,000 is being made available for building and deploying additional Type 5 wildland fire engines for local governments.
- 02:30:23 Rep. Lieser asked if any of the money will be used for Type 6 engines. Mr. Harrington said it is possible.
- 02:31:07 Sen. Keane asked if there is still \$44 million in the fire suppression account. Mr. Harrington said there is.
- 02:31:24 Sen. Keane asked if any more revenue will go into the fire suppression account this fiscal year. Mr. Harrington said if additional money is put into the account it will be at the end of FY15.
- 02:32:14 Sen. Fielder asked how the DNRC is planning to use the \$1 million that has been earmarked for reducing fuel on federal lands. Mr. Harrington described some of the projects being considered.
- 02:34:32 Sen. Fielder asked if the DNRC, when looking at areas for priority treatment, is considering areas that are most threatened like municipal watersheds. Mr. Harrington said it is part of the matrix to look at where the projects are and if they are in some of the highest priorities areas relative to either watershed protection or community protection.
- 02:35:57 Sen. Fielder asked if he has any idea how many additional acres can be treated utilizing the funds on federal lands next year. Mr. Harrington said DNRC has not yet identified any specific projects.
- 02:36:35 Sen. Ripley asked how much more expensive is it to fight fire from air. Mr. Harrington said it is approximately five times more expensive.

ENDANGERED SPECIES ACT RULING ON STATE FORESTS

- 02:40:16 Sen. Brenden discussed the negative impact that Judge Molloy's order on *Friends of the Wild Swan et al. v. USFWS, Montana Board of Land Commissioners, and DNRC* has had on the ability of the state to manage its forests.
- 02:41:47 Sonya Germann, forest management bureau chief, Trust Land Management Division, DNRC, discussed the impacts from the district court ruling on its Habitat Conservation Plan (HCP) Incidental Take Permit, [Exhibit 6](#).

02:48:37 Tim Bodurtha, U.S. Fish and Wildlife Service (USFWS), discussed the development of the HCP from the USFWS perspective. He said the USFWS and the Montana Department of Justice (DOJ) are working together on evaluating how to proceed.

Public comment

02:52:15 Julia Altemus, Montana Wood Products Association

Committee questions and discussion

02:56:27 Rep. Lieser asked if the Friends of the Wild Swan, Montana Environmental Information Center, and Natural Resource Defense Council were involved in the development of the HCP. Ms. Germann said they were.

02:57:50 Rep. Lieser said he is concerned about the viability of the timber industry in Montana. He said the DNRC and the USFWS has done everything it can to accommodate the interest of the litigants and hopes a solution can be worked out quickly.

02:58:49 Rep. McChesney asked if the grizzly bear is delisted in the affected area how it will impact the court order. Ms. Germann said she did not believe the delisting will happen for a number of years. Mr. Bodurtha said if the grizzly bear is delisted the Incidental Take Permit would not be required.

03:00:47 Rep. Bennett asked about the timeframe for a resolution. Mr. Bodurtha said he did not know.

03:01:58 Rep. Bennett asked how the order will affect small logging mills. Ms. Germann said it will have a significant impact on their future log supply.

03:04:04 Mr. Busby asked if the plaintiffs filed suit based on what they didn't get from their public comments or something else. Ms. Germann clarified that they are suing the issuance of the Incidental Take Permit by the USFWS to the DNRC, and said they are suing on the points they did not get in the HCP

03:05:35 Sen. Fielder asked if the HCP included consolations or compromise due to the request of the litigants. Ms. Germann said they did do some adjustments and felt they developed a sound plan that considered many of the public comments.

03:07:24 Sen. Fielder asked if the USFWS is going to update the Grizzly Bear Recovery Plan. Mr. Bodurtha said he did not know. Sen. Fielder said the EQC sent a letter to the Interagency Grizzly Bear Committee, which was forwarded to the USFWS recovery coordinator, and asked for information on what is being done to update the plan based on current science. Mr. Bodurtha said he will forward the request to the recovery coordinator.

03:10:04 Sen. Brenden said members of the EQC can also ask Congress for an answer.

- 03:10:18 Rep. McChesney asked if there is any recourse for the companies that have been negatively impacted, to file a counter suit to collect costs plus punitive damages. Ms. Thigpen said normally plaintiffs are responsible for their own costs and attorney fees.
- 03:12:15 Rep. McChesney asked if it would be possible to legislatively make it easier. Ms. Thigpen said Congress could consider doing that.
- 03:12:40 Rep. McChesney said he is concerned and that there needs to be a way for plaintiffs to recover their loss.
- 03:13:18 Sen. Ripley asked, in regard to the potential listing of the Greater Sage-grouse as an endangered species, if either the DNRC or USFWS has reevaluated their process in order to determine if they could have done anything to prevent a lawsuit from happening. Shawn Thomas, administrator, Trust Land Management Division, DNRC, said the executive order is a good step forward to keep management of sage grouse under state control.
- 03:15:31 Mr. Busby said a Texas federal judge recently gave an administrative order against several environmental groups for a large punitive order against frivolous lawsuits. Sen. Fielder asked staff to provide information on the case.
- 03:16:47 Mr. Aspenlieder asked about the ability and capacity for the timber companies to recover their costs and if what the state is offering will fully cover their costs. Ms. Germann explained the terms of the timber sale contract.
- 03:20:03 Mr. Aspenlieder said that during the next legislative session, the DNRC, in collaboration with the wood products industry, needs to look at ways to minimize the risk to private industry associated with lawsuits.
- 03:22:14 Rep. Court asked when the timber companies bid their contracts if they had any idea there could be a potential for lawsuits. Ms. Germann said a lot of the timber sale purchasers were surprised.
- 03:24:53 Rep. Bennett asked if there is any opportunity to exchange areas and allow contractors to move into a different area so they can have the wood to reach their yield for the year. Ms. Germann said because of DNRC's parameters as administrators of the trust beneficiaries it is difficult to do replacement volume.
- 03:27:07 Sen. Hamlett said it is a serious issue because it affects school trust lands and Montana education. He said there needs to be legislation to allow the attorney general to intervene on behalf of the citizens of Montana in these type of cases.
- 03:29:15 Rep. Lieser asked about the fire suppression money that is available for fuel reduction projects and if there is any way to give the contractors that have been impacted by the order preferential treatment for projects. Ms. Germann said it may be an opportunity, but it won't change the operational season for these timber sales which is the biggest thing that is prohibiting activity on these sales.

03:30:59 Sen. Brenden commented on how litigation affects everyone.

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

None

OTHER BUSINESS

03:34:02 Sen. Brenden opened discussion on the Dingell-Johnson brochure.

03:34:15 **Motion:** Sen. Ripley moved to approve publication of the Dingell-Johnson brochure.

03:34:22 Mr. Kolman said the EQC also needs to approve the HB 609 study report.

03:34:41 **Motion/Vote:** Sen. Ripley amended his motion to approve the HB 609 report including the publication of the Dingell-Johnson brochure. The motion carried unanimously by voice vote.

03:34:56 Sen. Brenden asked if there is anything else the EQC needs to consider. Mr. Kolman said there is not.

03:35:06 Rep. McChesney requested a moment of silence for the disaster on 9/11.

03:35:48 Sen. Brenden thanked the staff and council members for their work on the EQC.

03:37:08 Sen. Brenden adjourned the meeting at 11:45 a.m.

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