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LEGISLATIVE
ENVIRONMENTAL
ANALYST
Todd Everts

ENVIRONMENTAL QUALITY COUNCIL

July 29 and 30, 2002

State Capitol, Helena

FINAL MINUTES

Approved September 12, 2002

COUNCIL MEMBERS PRESENT

SEN. BEA MCCARTHY, Chair
REP. DOUG MOOD, Vice Chair
SEN. MACK COLE
REP. MONICA LINDEEN
REP. DON HEDGES
REP. DEBBY BARRETT
REP. CHRISTOPHER HARRIS
SEN. JON TESTER

MR. TOM EBZERY
MS. JULIA PAGE
MS. ELLEN PORTER
MR. TODD O'HAIR

COUNCIL MEMBERS EXCUSED

REP. PAUL CLARK
SEN. PETE EKEGREN (on July 30)
SEN. WALTER McNUTT
SEN. KEN TOOLE
MR. HOWARD STRAUSE (on July 30)

STAFF MEMBERS PRESENT

MR. TODD EVERTS
MR. LARRY MITCHELL
MS. MARY VANDENBOSCH
MS. KRISTA LEE EVANS
Ms. Robyn Lund, secretary

AGENDA

Attachment 1

VISITORS' LIST

Attachment 2

COUNCIL ACTION

- Decided to have MR. EVERTS look for new constitutional language for 82-4-3369(c), MCA
- Approved energy handbooks
- Authorized drafting of DNRC agency bills
- Authorized drafting of DEQ agency bills

JULY 29, 2002

I CALL TO ORDER

Roll call was taken.

II ADOPTION OF MINUTES

MOTION/VOTE: REP. HEDGES moved to adopt the May 9 minutes. Passed unanimously.

III ADMINISTRATIVE MATTERS

There were none.

IV MONTANA CODE CLEANUP FOR SECTIONS OF LAW THAT HAVE BEEN DECLARED BY A COURT TO BE UNCONSTITUTIONAL DURING THE LEGISLATIVE INTERIM

MR. EVERTS referred to **EXHIBITS 1 and 2**. Judge Thomas Honzel of First District Court of Helena, issued a decision that ruled that a provision of the Metal Mine Reclamation Act (MMRA) was unconstitutional. Judge Honzel noted that this provision of the MMRA precluded backfilling of open pits and therefore violates the constitution. That decision is not being appealed. This issue before the EQC is a code cleanup issue. The Code Committee is no longer in existence. In the past that is who would have dealt with this issue. The fundamental premise behind this type of cleanup is that anyone who looks at the Montana Codes Annotated (MCA) needs to know that it is the most current law.

MR. EBZERY asked if the provision at issue was added by Sen. Charles Swysgood during the 2000 special session. **MR. EVERTS** said that it was. The bill was adopted in the 2000 special session in response to another Judge Honzel decision. **MR. EBZERY** asked if it was intended to assist at least one company. What is the status of that in regards to this ruling? Is there an effort being made to make this provision of the law constitutional? **MR. EVERTS** said that the status is that the Montana Department of Environmental Quality (DEQ) is not implementing this provision of the law. The default is to go back to the environmental impact statement (EIS). The department is making no attempts to alter the language in any way.

REP. HEDGES said that there are many open pit mines across Montana, some of which are impossible to backfill. The term used is reclamation, not restoration. **MR. EVERTS** said that this applies to the specific circumstances of the Golden Sunlight Mine and also the specific statutory language that precludes partial backfilling.

SEN. COLE asked if there is a reason why this portion of the MMRA was declared unconstitutional and what might be done as far as additional legislation that might make it constitutional. **MR. EVERTS** said that it is a policy decision on the part of the Legislature. He hadn't looked at any alternative language that would make it constitutional. This was just a mechanical request. **SEN. COLE** asked if it is

unconstitutional, how can it be left on the books. **MR. EVERTS** said that the Legislature has, for a variety of reason, left unconstitutional provisions on the books. The fundamental premise of removing the law is that anyone in Montana should be able to look at the law and know that it is the law.

MR. EBZERY asked if it would make sense to look at this statute and report back to see if there are ways of drafting a provision that was constitutional. If it can't be done, he would be the first to move to strike that provision from the books.

REP. LINDEEN asked what the votes were on this bill. Was it controversial? **MR. EVERTS** said that he would have to look at the legislative history. He recalled it as being a controversial piece of legislation. **REP. LINDEEN** said that it would be interesting to see if the Council could agree on this issue in one meeting and pass it out as an EQC bill. By requesting legislation to remove it, that discussion could occur at the session if someone to introduce the language as a bill.

REP. MOOD said that prior to the bill, the DEQ was requiring backfilling in all cases. His understanding was that the bill intended to make backfilling discretionary. Judge Honzel is saying that you have to backfill no matter what. This would eliminate mining in Montana all together. He would agree that if there isn't language to make this constitutional, it should be repealed.

SEN. TESTER asked if **MR. EVERTS** would have time to do this justice between now and the September meeting. **MR. EVERTS** said that a judge determines what is constitutional and what is not. Greg Petesch, Legislative Services Division, drafted this bill and thought that it was constitutional. He would caution the Council that there may be a way to make it work, but it is not something that is absolute and he can't guarantee that the language that would be developed would be upheld. **SEN. TESTER** said that if we pull this off the books, it will be addressed in the next session.

MOTION: SEN. TESTER moved to request legislation to remove section 82-4-3369(c) (MCA) from the codes.

Discussion:

SUBSTITUTE MOTION: **SEN. COLE** moved to ask **MR. EVERTS** to look at the possibility of writing amended legislation to make this constitutional that could be looked at by the full EQC at the September meeting.

Discussion:

SEN. TESTER asked if **MR. EVERTS** comes back and hasn't found a way to make it constitutional, then is the intent to leave the law on the books. **SEN. COLE** said that at that point the Council could look at it again.

REP. HEDGES said that **SEN. COLE** was suggesting that we prepare legislation to make this law constitutional or, if the first option is not possible, to have legislation prepared that cleans up the code and removes the law. In September, the committee will have a choice as to what way to go.

MR. EBZERY said that it would be simple, if **MR. EVERTS** can't fix it, to remove it from the books.

REP. HARRIS said that another alternative is that, assuming **MR. EVERTS** can find language, the Council would then have to deal with the merits of this as policy, which would take a full hearing with public comment. There is a question on the policy of this issue. If this is an EQC endorsed piece of legislation, then we are supporting this as a matter of policy.

MR. EBZERY said that the Council would check on its constitutionality once that language would be available to someone to sponsor during the 2003 legislative session. It might be late to take a council position on the legislation having just seen it in September. He doesn't feel that there is time for a public hearing.

MR. EVERTS said that he can come up with language that makes it constitutional to Judge Honzel. The Legislature, in terms of policy, has tried to narrow that. He needs

advice in terms of what type of language the Council wants. He needs to know the policy direction that the Council wants to take.

MR. STRAUSE said that even to give a policy direction would require some information about where the Council should head on this issue, without having information or a hearing. The Council may be wasting MR. EVERTS' time to ask him to come up with a bill that they won't take action on. There needs to be a clear record about what has happened here. The DEQ's recommendation was for backfilling, but the DEQ didn't adopt that alternative because the language in this statute prohibited backfilling. The DEQ needs to be able to have a site specific plan, which was there before this provision was put in place.

REP. HEDGES said that he would take exception to the interpretation of Judge Honzel's requirement. Judge Honzel said that the provision prevented reclamation from happening, which is not the case.

MR. STRAUSE said that the judge says that the statute provides for site specific conditions and circumstances, which must be taken into consideration when preparing a reclamation plan. The EIS did this and concluded that partial backfill was the preferred alternative, but this was precluded by this legislation. It seems that when the DEQ didn't appeal the decision, they are agreeing with the decision.

SEN. COLE said that those would be some of the things that MR. EVERTS would be looking at and would bring to the Council in September.

VOTE: Substitute motion passed 9 to 4, with REP. HARRIS, REP. LINDEEN, SEN. TOOLE (by proxy), and MR. STRAUSE voting no.

SEN. McCARTHY stated that she wants specific directions for MR. EVERTS.

SEN. TESTER said that the legislation should give the DEQ enough authority, so that they can provide for backfilling if necessary. **SEN. McCARTHY** asked if the economics of the backfilling come into question at any point. **SEN. TESTER** said that economics have to come into it, but we can't disregard the laws on the books for environmental

safeguards. We don't want to encumber the DEQ in any way. It will be hard to come forth with any legislation by September because of all the information that needs to be considered. For example, who determines what economic backfilling is?

MR. EBZERY said that MR. EVERTS should look at the bill in the spirit of why it was passed when it was passed and the intent of the majority at that time.

REP. HARRIS said that is one consideration, but what the DEQ now considers the appropriate response could be different. This is substantive, not just a constitutional fix. If we aren't having a hearing, why are we making this fix? He feels that a full hearing is needed.

MS. PORTER said that there could be some language to give the DEQ authority to set guidelines or a range.

SEN. COLE said that MR. EVERTS, along with the EQC and the DEQ can bring something back that is fair and equitable. We need to look at both sides.

V RECESS FOR THE DAY

JULY 30, 2002

VI SUBCOMMITTEE REPORTS

• Coal Bed Methane/Water Policy Subcommittee

SEN. COLE thanked MR. EVERTS for his hard work. At the meeting the Subcommittee went through the draft report and the draft "Guide to Montana Water Quality Regulation." There were a few changes made. **MS. EVANS** said that she would send that handbook out to the full EQC prior to the September meeting. **SEN. COLE** said that there was a report on litigation with coal bed methane (CBM) natural gas. There were 5 or 6 cases. Some of the cases are larger than others. This gives an idea of what is happening down the road as far as CBM development is concerned.

SEN. COLE said that there will be an informational meeting on August 9 with the Senate Energy Committee that will include many subjects and may be of interest to council members.

MR. EVERTS said that he would hand out the agenda and memo later today regarding that energy meeting.

SEN. TESTER said that Brookes Daily had an outstanding presentation on fuel cells that may be of interest to that committee.

SEN. COLE said that on September 9 and 10, there will be a tour of some of the CBM wells. There will be some information from Montana and Wyoming as far as what is happening with CBM development. Everyone is welcome and he will provide agendas to those interested.

SEN. McCARTHY said that it is not an EQC tour. This is an industry tour.

SEN. COLE said that the Wheeler Institute is meeting on September 26 and 27 in Billings.

MS. VANDENBOSCH said that the current agenda for the conference was given to the CBM Subcommittee yesterday. She can provide a copy to interested members if requested.

SEN. COLE said that Anderson Zur Muehlen did a report on the economic and social impacts of CBM development in the Powder River Basin. Page 20 gives an estimated summation of what is coming as far as the economic benefits of the life of the project. The bottom line is a figure of approximately \$4 billion.

MS. PAGE said that the Board of Environmental Review initiated a process for rule making for numeric standards for electric conductivity and the sodium adsorption ratio. The Board was presented with 3 alternatives. There will be hearings at the end of September on these alternatives. The alternatives will then return to the Board.

SEN. TESTER thanked MS. VANDENBOSCH and MS. EVANS for all of their hard work as subcommittee staff.

• ***Energy Policy Subcommittee***

REP. LINDEEN said that the Energy Policy Subcommittee was a good subcommittee that worked well together. The Subcommittee's work culminated in the two handbooks. Yesterday the Subcommittee looked at the public comments for those two documents. Those comments were reviewed and incorporated. There weren't any substantive changes to the books. They still have to go through editing and the DEQ will have a supplemental report that will be presented in September. The Subcommittee tried to make the handbooks simple so that the average person could understand them. These would have been helpful in the last legislative session.

REP. MOOD said that having gone through the books, it would have been nice to have had these prior to that last session. They will be very valuable in the next session to see where we are going with energy laws in the state.

MOTION/VOTE: REP. LINDEEN moved for approval of the handbooks. The motion passed unanimously.

MR. EVERTS said that the supplemental report from the DEQ will come in November.

• ***Agency Oversight/MEPA Subcommittee***

REP. HARRIS said that the most significant issue yesterday was with the Petroleum Tank Release Compensation Board and their funding crisis. They have a loan from the Board of Investments with a current balance of \$676,000. The Board helps out the Mom and Pop gas stations when there is a leak. A leak can be massive and massively expensive. This is a critical program and is financed by 3/4 cent fee on every gallon of gasoline sold. The number of open cases is large and it is absolutely necessary that they get a fund increase of some kind. The Petroleum Tank Board agreed that a 1/4 cent increase of that fee would be necessary and beneficial in dealing with the number

of open cases. The Subcommittee recommends that the EQC support that increase on a temporary basis.

REP. HEDGES asked what “temporary” means. **REP. HARRIS** said that it may be 4 or 5 years. It may be less than that. They want to get it to a working level.

REP. BARRETT said that there are 12 state-owned sites. When did those come onboard and why? **REP. HARRIS** said that information was provided, but he didn't have it. There are 12 open cases, but he is not sure if the Petroleum Tank Board funds those state-owned sites.

MR. MITCHELL said that this is mostly Department of Transportation, as they find undiscovered tanks. He is not sure if the tanks that they discover fit the criteria for reimbursement.

SEN. TESTER asked if counties are eligible. **MR. MITCHELL** said that they are.

REP. HARRIS said that there was a lot of discussion as to whether the Petroleum Tank Board staff is working as efficiently as possible. They are engaged in micromanagement of the consultants, which may not be the most efficient way to go. The DEQ said that they were aware of that issue and are taking measures to improve the efficiency of the staff to help cleanup occur quickly.

MOTION/VOTE: **REP. HARRIS** moved that the EQC support of DEQ legislation increasing the fee by 1/4 cent per gallon of gasoline. The motion passed 12 to 1, with **REP. BARRETT** voting no.

REP. HEDGES said that the DEQ is forcing a lot of costs onto the operators that may or may not be necessary. An example is the float stop that was required and then determined to be ineffective.

SEN. TESTER said that he had had one tank a year in his district. Some of the consultants see this as a cash cow. One example he was familiar with was stretched

out over 7 years and in the end they removed the soil and replaced it. It would seem that additional oversight might be appropriate.

REP. HARRIS said that they also approved a pamphlet explaining MEPA and a version that will be put on the Internet. This has been an elaborate process of consulting with the agencies and public. This is a document that everyone can agree on. It will be sent to the full Council.

REP. BARRETT said that she had an issue with FWP and MEPA implementation. In lieu of MR. EVERTS' opinion, she would recommend that the FWP systematically report to the EQC staff, from now until the EQC meets in May, on what triggers MEPA and what doesn't. She just wants a list of projects, plans, and proposals before they start working on them.

SEN. McCARTHY said that she is hesitant to bring a new subject up today because of the number of members who are not present, but it could be brought up at the September meeting.

REP. HARRIS thanked MR. MITCHELL for his work on the Subcommittee.

VII DEPARTMENT OF FISH, WILDLIFE AND PARKS (FWP) SAGE GROUSE MANAGEMENT

MS. EVANS said that at the last meeting the EQC wrote to the Department of Fish, Wildlife, and Parks (FWP) asking about the sage grouse management and the draft conservation plan. In the mailing there is a copy of the letter that was sent to the FWP, see **EXHIBIT 3**. The director is here to answer questions.

Jeff Hagener, FWP, said that he is available to answer questions.

John McCarthy, FWP, said that there have been 2 petitions to list the sage grouse in Montana since June. One is a range-wide petition that was submitted by an individual in California. The other is a petition from a coalition of different conservation groups in Washington. With these 2 petitions, it changes the circumstances of the conservation

plan. The FWP is still committed to the conservation planning effort, now they may have more federal support of the conservation plan. They hope to have a draft out to the working group next week, allowing for comments and allowing time for those comments to be incorporated. Then the conservation plan will go out and MEPA could be started on the draft and alternatives.

REP. BARRETT asked if the letter that the EQC sent to the agency had been answered.

Mr. McCarthy said that they have put together a response. **Mr. Hagener** said that the FWP has a response. They have been discussing this with MR. EVERTS. They are waiting to see MR. EVERTS' final memo before they made their response. **REP.**

BARRETT asked about the memo from Lori Nordstrum, U.S. Fish and Wildlife Service, **EXHIBIT 4**. This memo refers to the petition. Ms. Nordstrum said that this gives the strong impetus to finish the Montana Sage Grouse Conservation Strategy and start implementing actions to accurately assess the population status and address the threats to sage grouse. Besides the conservation plan, what else has the FWP done to address this species? **Mr. McCarthy** said that they have increased efforts over the past 3 years to determine distribution and density of sage grouse in the state. They have been mapping that information. They intend to continue with these efforts. **REP.**

BARRETT asked if these are categorized as environmental reviews. **Mr. McCarthy** said that this is surveying inventory under the wildlife division. There are some studies going on through the university system as well.

MR. EVERTS said that REP. BARRETT requested a legal opinion about this issue, **EXHIBIT 5**. The question dealt with whether a memorandum of understanding (MOU) triggered the MEPA review process. It also asked the question of whether the MEPA review process was triggered if the department develops a sage grouse management plan. After reviewing the MOU's, it didn't look as if they are binding on the department. If they are not binding, then the MEPA review process was not triggered. If they were binding, then a MEPA review process would be triggered. The development of a sage grouse management plan did trigger a MEPA review.

Jeff Hagener, FWP, said that this has been a convoluted process because the FWP doesn't have control over a large part of the land that sage grouse are on. There were

changes in the federal personnel that they are dealing with; there is not a clear commitment of the federal agencies on what they were going to do with the conservation plan. The FWP asked for commitments from the agencies, but have not received them. If FWP is going to continue with the plan, they need to know how the plan will be utilized. They believe that a plan is pertinent and necessary. However, if they did not see a commitment, they may not go ahead with a plan, rather they would do something that FWP could use . They don't have the authority to regulate the federal agencies and what they will do. Much of the habitat is on Bureau of Land Management (BLM) or Forest Service land.

VIII RENEWABLE RESOURCE GRANT AND LOAN PROGRAM APPLICATIONS AND RANKING REPORT

John Tubbs, Department of Natural Resources (DNRC), referred to **EXHIBITS 6 and 7**. Everything is being affected by the budget crisis, including natural resource agencies. The main program that EQC has oversight responsibility for the Renewable Resource Grant and Loan Program. This provides grants across the state to assist in natural resource projects. The purpose of the grant and loan program is to conserve, manage, develop, and protect Montana's resources. They are in the process of reviewing the grants on the application lists and how they help conserve and manage resources. Management may be water meters, for example. Development could be anything from a municipal water system to development of a wetland conservation project. Protection includes those projects that protect the quality of the resources and existing natural resource project maintenance.

Generally the DNRC ends up with enough good projects that they run out of money and are not able to fund them all. Funding is available to state government, incorporated cities and towns, water and sewer districts, conservation districts and tribal governments. In the past 2 bienniums they have allocated \$300,000 for planning grants with a 50/50 cost share. There are loans available.

SEN. TESTER asked if there is an unincorporated town, can they apply through the county? **Mr. Tubbs** said that they can apply through the county.

SEN. McCARTHY asked why all the money went into 3 grants this year. **Mr. Tubbs** said that the loan requests are separate from the grant dollars; only 3 entities have requested loans.

SEN. McCARTHY asked if the interest rate is set when they receive the money. **Mr. Tubbs** said that the interest rate is established by the Legislature. The Department will make recommendations to the Legislature about what that rate should be.

Mr. Tubbs said that they use a uniform application. There is \$4 million from the RIT allocated for the grant program. They will be able to fund just over half of the programs. It becomes a competitive process. After the special session, they will go into a ranking of the projects. The Long Range Planning Committee has been good to work with.

SEN. TESTER asked how many dollars are available for emergency grants. **Mr. Tubbs** said that each biennium they are appropriated \$125,000. They have expended just over \$100,000 this biennium.

SEN. McCARTHY asked if it would roll over. **Mr. Tubbs** said that it would.

SEN. TESTER asked how many projects would be funded. **Mr. Tubbs** said 6 or 7.

SEN. TESTER asked if they would be decided by prioritizing. **Mr. Tubbs** said that the list will be ranked. **SEN. TESTER** asked if that is of all the projects. **Mr. Tubbs** said that emergency projects are treated as emergencies. The engineer generally goes out to the site within 48 hours in those cases. If it is an emergency, the applicants are generally fixing the problem even if they can't pay for it.

Mr. Tubbs said that planning grants are being used to get good projects and applications.

REP. LINDEEN asked for the ranking criteria. **Mr. Tubbs** said that with regard to ranking, if a project impacts the environment they take points away from a project. A project can lose points on financial feasibility. A project gets points for technical feasibility: Did the project operators consider alternatives or feasibility studies that show different alternatives. In some cases, if a project doesn't get those points, it won't be competitive. The last big category is public benefits, measured on conservation,

management, development and protection. Those projects that provide the most benefits get put on the top of the list. **REP. LINDEEN** asked when the ranked projects are brought to the Long Range Planning Committee, do they use the same criteria? **SEN. TESTER** said that the committee did not. They don't move many projects around. Sometimes a project is moved for political reasons. **Mr. Tubbs** said that once the Department recommends it, the director goes over the list and identifies projects that need to be moved, then it goes to the Governor and the Legislature. The Governor has the opportunity to make her policies known. Long Range Planning holds hearings where every applicant can come before the Committee to tell why their project should be funded. Overall, the Committee has generally retained the Department's recommendations.

REP. HARRIS asked if there is any match with federal funds. **Mr. Tubbs** said that there is. Some of the projects have huge matches, some may be just one to one. Local communities are working with state and federal funding sources. **REP. HARRIS** asked if the funding source was the Coal Tax Trust Fund bonds. **Mr. Tubbs** said that some is interest from the Resource Indemnity Trust (RIT) interest. There is the loan part of the program where they sell bonds to the public with the borrowers paying the majority of that money back. The Coal Severance Tax Trust Fund pays the interest subsidy on the loan. There is a private loan program that is lending money to irrigation operators. **REP. HARRIS** asked if there are suggestions to dip into the RIT in preparation for the special session. **Mr. Tubbs** said that it is the executive proposal to do that. **REP. HARRIS** asked for that amount. **Mr. Tubbs** said that the proposal was to impact the Reclamation Development Grant Program and take about 30% of the revenue in the account, representing a 50% cut to that program, moving that money to the general fund. The executive proposal has been limited to the biennium in its current form.

Mr. Tubbs showed a video showing how the state and federal programs are working together. This is one place where the state can be proud. They are getting good play at the national level as a model for other states. The video gave the example of the new water system in Twin Bridges. The city was able to apply for a combination of grants and loans to get their project done. Glasgow and Roundup were other examples that were able to do the same thing.

REP. BARRETT asked for something other than a community, a watershed for example, that has more than one project, is there a mechanism that tracks that. **Mr. Tubbs** said that any one of the agencies could show the history of a project sponsor requests. Every local government is making more than one request over time. These aren't programs that are being funded. They encourage people to find operating revenues through other sources. They try to watch that. **REP. BARRETT** said that there isn't a limit to the number of projects per entity. **Mr. Tubbs** said that they do to some extent. An example is the Montana Salinity Control Association. It got grant money to run the program for the first 2 years; when they requested additional money they were denied and told to get funding from the state. The Department keeps track. **REP. BARRETT** asked if there is no place in state government where someone could look up the history of a group. **Mr. Tubbs** said that the Department could provide that answer if they were asked.

REP. HEDGES asked if, in the grant requests, there is a request for a cleanup in the middle of a Superfund site, shouldn't they get their money from the superfund program. **Mr. Tubbs** said that reclamation development grants and renewable resource grants can compliment the work of the Superfund. Often the Superfund is not responsible to cleanup everything.

MS. PORTER asked if they consider applications for adding new people to a waste water treatment plant rather than upgrading the system. When they are looking at the applications, do they analyze the downstream impacts to an already overburdened system in granting the money? **Mr. Tubbs** said that it is a combination of impacts and the applicant looking at those impacts. At a certain point they don't answer those questions. Sometimes they can help direct local issues, but often they have to get out of the way. The Department can't solve local controversies. They look to the local county to see what the local county wants to do before the Department can participate.

REP. HEDGES asked if the Council would receive a running list of the approved projects when they are approved. **Mr. Tubbs** said that the Council already does throughout the process.

Mr. Tubbs said that the Milk River Project would not be able to be solved with the grant program. They have known about the issues of the irrigation project that serves 110,000 acres of irrigated land that has had deferred maintenance its entire life. It will cost \$100 million to repair the infrastructure. It is a Bureau of Reclamation project. The assessments go to pay the Bureau to operate it. If anything needs to be fixed the irrigators have to pay for it. The only repair being done is through the state grants. Each district has received some money. They are not going to be able to even make a dent in this project with this grant program. The Milk River Irrigators are not organized to where they need to be. This is a very serious problem.

SEN. TESTER asked if there was going to be 30% cut from the program. **Mr. Tubbs** said that the cut wasn't the coal tax. There are a couple different funding sources. It is the oil and gas tax revenue and the metal mines tax that used to go into RIT that is being diverted into the general fund for 2 years. **SEN. TESTER** asked how much money goes in the grant program over the coal tax monies. **Mr. Tubbs** said that the \$500,000 from the coal tax pays debt service on bonds for large irrigation projects. The renewable resource grant and loan program will not have any executive cuts. The reclamation development grant program receives money from the other resource taxes as well as RIT interest. The executive proposal is to move the tax revenues out of there to the general fund for 1 year. **SEN. TESTER** asked for the overall impact of that.

Mr. Tubbs said that it would be about \$1 million. It erodes the fund balance so that they will go into a deficit by the end of the fiscal year. There will be negative fund balances in those accounts. **SEN. TESTER** asked how many projects will be funded with these cuts. **Mr. Tubbs** said that the interest money is earmarked for grants. The tax money is for grants and agency appropriations. There will have to be some discussion about who gets to expend the remaining revenue. He can only think that it will impact both groups, grants and agency appropriations.

SEN. McCARTHY asked if there are any grants that need additional grants to continue. **Mr. Tubbs** said that there are. Those have been identified. **SEN. McCARTHY** said that should possibly be an exempt category for those grants. **Mr. Tubbs** said that those grants were identified and there were ways to not cut them. **Mr. Tubbs** said that there are contracts with them.

IX REVIEW OF LEGISLATIVE AGENCY PROPOSALS

• *Overview of the Council's Legislative Review Process*

MR. EVERTS said that in past interims the EQC has brought the DEQ, the DNRC, and the FWP before it to review legislative proposals. The Council is required to review agency descriptions of proposed legislation and decide if they will request that legislation be drafted. This is a procedural decision on the part of this council. Legislative Council has outlined a process for this review. They envision that most of the agency legislation will be requested for drafting purposes. A request for drafting purposes is not an approval of the bill by the EQC, it is simply to get the bills into the drafting process. Having agency bills drafted early helps facilitate the legislative process. This is the chance as an interim committee to provide feedback to the agencies on their legislative proposals. This doesn't prohibit the agency from finding a legislator to request that a specific piece of legislation be drafted on the agency's behalf. He referred to **EXHIBIT 8**.

• *Department of Natural Resources and Conservation (DNRC)*

See **EXHIBIT 9**.

Don MacIntyre, DNRC, said that as of yesterday there were 16 proposed bills. The Reserved Water Rights Compact Commission's authorizing legislation terminates the Commission in 2005. The Commission is currently negotiating with tribes and the federal government. Negotiations will not be completed by the end of the Commission's termination. The Commission hopes to extend the termination date to 2009 because the negotiations will not be completed by 2005.

REP. HARRIS asked how the tribes feel about the extension. **Mr. MacIntyre** said that his understanding is that the tribes are supportive of that. **REP. HARRIS** asked if this required anything by the federal government. **Mr. MacIntyre** said that it did not.

SEN. COLE said that if there is not an extension, the cases may end in court. **Mr. MacIntyre** said that is a fair statement. **SEN. COLE** said that this legislation is needed.

Mr. MacIntyre said that the Forestry Division has 3 proposals. 35-004, deals with Montana efforts regarding fire fighting costs. The Governor can declare an emergency as a result of firefighting, making funding from the emergency fund available to the Department. The proposal is to increase the fund from \$12 million to \$25 millions and to dedicate a maximum of \$15 million to fire fighting costs to the Department in the case of an emergency. This bill deals only with the emergency funds for firefighting.

REP. HARRIS asked if this money is in a separate account. **Mr. MacIntyre** said that the money is dedicated to the emergency fund for the Governor, but he is not sure where it actually sits.

SEN. COLE said that it is \$15.4 million for firefighting. **Mr. MacIntyre** said that was correct. **SEN. COLE** asked what the rest of the fund would be used for. **Mr. MacIntyre** said that it could be any emergency. It is strictly emergency funds once the Governor declares a state of emergency.

REP. BARRETT asked about the last paragraph that says that the job has become increasingly difficult for 3 reasons, see EXHIBIT 9. She wondered if road closure should be a fourth reason. **Mr. MacIntyre** said that this deals with the efforts of the Department to fight fires wherever they occur. **Tony Liane, Forestry Division**, said that access is an important part of their ability to fight wild fire. Road closures or lack of access make it more difficult to get to the fires. Access is a critical need to get the fires out quickly.

Mr. MacIntyre said that 35-006 deals with timber harvesters that have to pay under the fire hazard reduction program. They currently pay \$25 into the state special revenue fund. In addition there is a 60 cent per 1000 board feet fee if products other than logs are cut. The fee would be increased to \$1.00 per 1000 board feet . The resulting revenue would be approximately \$60,000.

MS. PORTER said that the money for the hazard reduction program is a bond and the loggers will receive a chunk of that money back after the site is reclaimed. **Mr. MacIntyre** said that there is a bond in addition to that. **Mr. Liane** said that the total fee that is set aside is \$6.75 per 1000 board feet that goes into a holding account. \$6.00 is the money that is returned to the logger when the slash has been treated. 60 cents is

held by DNRC for administration of the law and 15 cents goes to the extension service for promoting forest management programs in the state. **MS. PORTER** asked if the 60 cents is part of the \$6.75. **Mr. Liane** said that the increase would put that to \$7.15, giving \$1.00 toward administration. **MS. PORTER** said that one of the reasons that is stated is that, although the amount of board feet that is harvested is less, there are more projects. **Mr. Liane** said that they are getting a lot of smaller projects. Multiple projects require additional administration. **MS. PORTER** asked if that is the result of more appeals on proposed timber sales or less available for harvest. **Mr. Liane** said that some of small land owners, fuel reduction programs, slash agreements for those harvesting are a few examples of different reasons. Each individual project has the \$25 application fee. There is as much administration on a small project as a large, but less money coming in. **MS. PORTER** asked if they had considered any other methods of raising revenue, rather than increasing the burden on a struggling industry. **Mr. Liane** said that they are funded through the state special revenue. They are aware of the general fund financing problems. In the past they have not been able to get general fund increases.

SEN. McCARTHY said that this will raise an additional \$60,000 per year. **Mr. Liane** said that was correct.

Mr. MacIntyre said that 35-011 is the final forestry proposal. Under the current law, an owner of forest land has the duty to protect that land from forest fire. One mechanism that they can currently use is to form a district to give them protection. In doing that there is a cost assessed. The cost now stands at \$30 per land owner and no more that 20 cents per acre in excess of 20 acres. The proposed legislation would be to increase the cost to \$40 per landowner and a maximum of 25 cents per acre.

REP. HEDGES asked if there was consideration for a sub-development that may or may not be within the forest. **Mr. Liane** said that any forested acreage less than 20 acres, they have the ability to charge a maximum of \$30. They can charge an addition 20 cents per acre for above 20 acres. This will continue to be an issue as people move into the forested interface areas. The cost of fighting fire in the interface area is more expensive that just fighting fire in a forested area. This is the first step at addressing the increased cost of those firefighting efforts. They only increase the charge to the

landowner as the costs go up. They assess just enough to cover the costs of business. They are hitting the point at where they can't assess anymore.

REP. HEDGES said that in the eastern part of the state, the assessment for a fire district is based on value, so an owner who has made improvements pays a higher fire tax than the owner of just a piece of land. **Mr. Liane** said that this assessment is charged only on forested land. The statute dictates how they can assess those charges on forested land. He agrees that the value of the property should dictate the cost of protecting that from fire, but that is not how the statute was written. **REP. HEDGES** asked why we don't rewrite the statute. **Mr. MacIntyre** said that the purpose of this legislation was to address the rising costs that they are faced with while staying in the statutory framework.

REP. BARRETT asked if a bill will be sent to the federal agencies that manage forested land in the state. **Mr. Liane** said that the private owners in the state pay the assessment. The Forest Service has the responsibility to protect their lands. We protect Forest Service ground and the Forest Service protects ours. There is no charge for that protection.

Mr. MacIntyre said that the next division is the Water Resources Division. No. 24-12 is designed to define the term "appropriate," so that it is tied to the term "beneficial use." This bill will only address that issue. There is some argument that any time you physically alter a stream you are appropriating water, even if you don't put it to beneficial use. This is to clarify that a permit is only required if you are putting water to a beneficial use.

MR. EBZERY asked about the following scenario: CBM water is put into an impoundment that may be used for a rancher's benefit, what will they have to do different under this legislation? **Mr. MacIntyre** said that this would not change what is currently happening. If the water is going to be applied to a rancher's use, they have to get a permit and they still will under this statutory change. There would be no change. This is amending the law to follow how the DNRC is using the Water Use Act.

The second legislative proposal (24-016) deals with well drillers needing to file a well log report. The department takes that report and if it is complete, they accept it and send it

to the Bureau of Mines and Geology. This legislation takes the DNRC out as the middle person and has the well drillers filing the log directly with the Bureau of Mines and Geology.

The third piece of water resources legislation deals with the idea that the statute 82-2-521 MCA would be more appropriately located in the Board of Oil and Gas statutes. This is simply moving it to a different area of the code.

The final proposal by the Water Resources Division is 24-020. Presently there is a land lease account that has moneys that come from water projects. There is also an account where general state water project monies are placed. This proposal would get rid of the first account and puts those monies in with the other monies.

The Conservation and Resource Development Division is the next division. Under that law the state is authorized to sell bonds. Under the waste water treatment statutes, the states authorization is \$30 million, they hope to increase it to \$50 million. On the drinking water side they hope to increase it from \$20 million to \$40 million.

REP. MOOD asked if this is due to an increased use of the program or increased costs of current programs. **John Tubbs** said that it is increased volume. They have additional federal grants that will need to be matched. They are getting ready for the next 10 years of projects.

REP. HARRIS asked if this requires 2/3 vote of the Legislature. **Mr. MacIntyre** said that it does. It is the creation of state debt.

Mr. MacIntyre said that the next proposal is 23-010. The DNRC administers the Renewable Resource Grant and Loan Program. The proposed legislation increases the bond amount to \$30 million.

Mr. MacIntyre said that the final piece of legislation for this division deals with the processing of loans for the bond program. The state of Montana's bond counsel is suggesting that some legislative changes made to address some concerns that they have regarding state bonding.

Mr. MacIntyre said that the area of the Trust Land Management Division has 35-001, the land bank proposal. It would create a land bank fund and allow the Board of Land Commissioners to acquire and dispose of lands, and increase the revenue generating capacity of the trust lands. It will also allow diversification of the holdings and is intended to reduce the number of isolated parcels.

REP. BARRETT asked if this is similar to the bill that was heard in the Transportation Committee that said that if there was a small isolated parcel of land, it would be offered to the adjacent landowner. **Tom Schultz, Trust Lands Division**, said that they are thinking that if they sell state land it has to be put up for bid or auction. The parcels targeted will be those that don't have access. The adjacent landowner would be the most likely bidder for the parcel.

REP. BARRETT asked if there is a size limit to these parcels. **Mr. Schultz** said that they are looking at some sort of limit to the total amount of lands that could be sold during a certain period of time. This bill allows the Board of Land Commissioners to purchase new lands. They would try to keep the acreage and the type of use similar.

SEN. McCARTHY asked for the definition of the term "proposed land banking." **Mr. Schultz** said that the Board can sell lands. The proposal is that if the Board sells lands, the money could be put into an account temporarily and will be used to purchase other lands that were not isolated parcels. **SEN. McCARTHY** said that when this gets written up, we need to have that definition in the legislation.

MS. PORTER asked if they sell an isolated piece of land, would there be a chance that the new owners could get an easement to access that property. **Mr. Schultz** said that they are looking at a provision that they would have to be a qualified bidder who would have to have access to the parcel or a letter from the adjacent landowner.

REP. MOOD asked, in the situation just described, how do they replace the revenue that they will be foregoing while the money is in the land bank account. **Mr. Schultz** said that they are looking at purchasing a similar piece of land in the near term. It would be a short loss, but would hopefully add more revenue in the near future.

Mr. MacIntyre said that the next trust land management proposal is 35-003. This is in response to a situation in Lewis and Clark County over the development of rules. The agency is seeking clarification of rule making in this situation. This legislation would make it clear that MAPA is not a grant of rule-making authority. The rule-making authority must come from the Legislature when they make the substantive law.

REP. HARRIS asked if the Department of Justice (DOJ) had anything to say about this proposal. **Mr. MacIntyre** said that the DOJ would agree that rule-making authority needs to be in the substantive statute. It is really only clarifying that MAPA is not enough to determine that rule making must take place.

Mr. MacIntyre said that the next is 35-007. This bill would allow for the leasing of trust lands for recreational use by general public by a lease with the FWP. This would also provide, through rule making, for other recreational uses.

REP. HEDGES asked if these would be recreational leases on top of the current production leases such as grazing. **Mr. Schultz** said that it would. Currently there is a conservation license to recreate on trust land, that is on top of other leases on the land. They would do away with the \$10 fee charged the general public. They would instead enter into a lease with the FWP, getting fair market value. This makes sure that everyone is lawfully recreating on state land. The other thing, from the FWP perspective, the permit issuance would go away because there would be an annual payment for the cost of the lease.

MS. PAGE asked how the payment occurs in this proposal. **Mr. Schultz** said that the FWP would pay the Department fair market value for access to all state trust lands for hunting and fishing. **MS. PAGE** asked how they would arrive at that price. **Mr. Schultz** said that there would be an increase to the cost of the conservation license.

Chris Smith, FWP, said that they would be presenting a bill to increase the conservation license price so that there will be no net impact to the general licensing account. **SEN. McCARTHY** asked when they intended to increase the license. **Mr. Smith** said that the legislation to increase the price and to lease the land would come into affect at the same time.

REP. BARRETT asked how much the license is bringing in. **Mr. Schultz** said that last year it was about \$365,000. **REP. BARRETT** said that at that same time, has grazing permits on the same land increased. **Mr. Schultz** said that it has gone up. **REP. BARRETT** asked who will be in charge of managing the land as far as weeds. **Mr. Schultz** said that it would be the DNRC. This proposal would just be a change in how the fee is collected. **REP. BARRETT** said that there might be more use. The impact to the land could be greater because of an increase of people. **Mr. Schultz** said that if they noticed that, they would work with the lessee to deal with that. They don't feel that there will be a great increase in usage on those lands.

SEN. TESTER asked if this is because people are not buying the license. **Mr. Schultz** said that Montrust had a petition that the recreational fee was too low. They felt this was an opportunity to raise the overall income to the schools under this proposals. This is an alternative proposal. **SEN.**

TESTER asked if it is revenue neutral. **Mr. Schultz** said that the potential exists for more revenue to be guaranteed for the schools.

REP. HEDGES asked if they may be going to split the money with trust and FWP. **Mr. Schultz** said that 100% of the money will go to the school trust. **REP. HEDGES** asked what FWP will take for the management of the money. **Mr. Schultz** said that it would not change for the FWP. From an administrative perspective, there would be no more administrative costs.

MOTION: REP. HEDGES moved to segregate 35-007.

Mr. Schultz said that they are trying to capture the hunting and fishing that happens on state land and ensure that the state is adequately compensated.

Mr. MacIntyre said that the next proposal is 35-013. Currently the DNRC has authority for leasing trust land for home site, grazing, et cetera. This proposed legislation would make it clear that commercial leases are also appropriate. The idea would be to have leases not to exceed 99 years and there would be specific procedural requirements for commercial leasing.

REP. MOOD asked if there has been a suit against the DNRC on some property near Bozeman that was leased as a commercial lease, and is this in response. **Mr. Schultz** said that there is pending litigation in Kalispell, but this is not in response to any current litigation. They are developing commercial property and they want to ensure that they have statutory authority to do these activities.

Mr. MacIntyre said that 35-015 is limited to final agency actions related to the administration of state trust lands. It would clarify the time for taking final agency action. It would define that the final action is the date that the Board of Land Commissioners or DNRC issues a final environmental review document under MEPA or the date that the Board approves the action, whichever is later.

REP. HARRIS asked why “whichever is later.” **Mr. MacIntyre** said that the situation may be that the environmental document is completed, but the Board doesn’t get the issue decided for a few months. In fairness to the individuals questioning, the later date would be used to allow them the time necessary to bring an action. **REP. HARRIS** asked if the situation were reversed where the Board makes a decision, but there is no EIS. There would be no final agency action. **Mr. Schultz** said that before they send an action to the board, MEPA is done. This would apply to the DNRC as well. The problem that they run into in most cases is that they complete MEPA months before they go to the Board. They are looking for some clarification. **REP. HARRIS** is in agreement, but is looking at the other side of the coin. **Mr. Schultz** said that they do MEPA before they go to the Land Board. **Mr. MacIntyre** said that there is the situation where there is agency action, but there hasn’t been MEPA compliance. In that case, a law suit could be brought saying that there was not MEPA compliance. **REP. HARRIS** said that this may have some unintended consequences.

MOTION: REP. HARRIS moved to segregate 35-011.

MOTION: MS. PORTER moved to segregate 35-006.

MOTION: REP. HEDGES moved to approve the bills with the exception of those segregated. Motion passed unanimously.

Discussion on 35-006:

MS. PORTER said that she would like to see the agency look at other proposals other than increasing the fee to the loggers again.

Discussion on 35-007:

REP. HEDGES said that if we are going to move forward with a blanket recreational use of state trust lands with fees collected by the FWP and then turned over to the DNRC for school trust, then a system should be developed for the collection of the fee and the amount that goes to the trust. He can't support this if we are going to leave it up to the FWP to collect the money and then give the school trust what is left over.

REP. MOOD said that he likes this idea. This would replace the \$10 fee. This is nothing more than collecting the money and then writing a check. They are currently collecting the \$5 fee, the \$1 recreational fee will be added to that.

Mr. Smith said that there are 3 different pieces of the puzzle that we are talking about. This allows the DNRC to enter into a lease agreement with the FWP, rather than establishing an individual use fee. The second piece represents the increase in the fees that they would propose so that the lease with the DNRC would have no negative cash impacts on the FWP. They currently take some administrative overhead for selling the license. Under this proposal the financial transaction would be between the FWP and the DNRC. They have concluded that \$450,000 per year would be the appropriate value. This will come from the increase in the price of the conservation fee.

REP. HEDGES asked how many acres does the FWP have in the hunting block management plan. **Mr. Smith** said that it is between 2 and 3 million acres of private land. **REP. HEDGES** asked what the pay out to the landowners is. **Mr. Smith** said that it differs depending on the contract with the individual landowner and is capped between \$8,000 and \$12,000.

REP. HEDGES asked how many acres of state trust land would be included in this proposal. **Mr. Smith** said that it would 4.9 million acres. **REP. HEDGES** asked if block

management pays a certain amount to private landowners on fraction of those acres, shouldn't the school trust get the same amount. **Mr. Smith** said that the staff within the FWP and the DNRC that have negotiated the terms of this agreement could look at that. The statutory change today is one that allows the DNRC to move forward with a lease with FWP.

MOTION: REP. HEDGES withdrew his motion to segregate this bill.

REP. BARRETT asked if this is a lease with the FWP. **Mr. MacIntyre** said that it was.

REP. BARRETT asked how many leases can be on the same land. **Mr. MacIntyre** said that the leases are independent of each other. There can be as many leases as are needed.

REP. BARRETT asked, if people had a right before the lease, how would this lease between FWP and DNRC change that. **Mr. MacIntyre** said that the contractual agreement is between the FWP and the DNRC. It replaces the need to have a permit issued to each individual person to recreate on the state trust lands. It is simply making this an easier process.

VOTE: Motion to approve 35-007 passed 12 to 1 with REP. BARRETT voting no.

Discussion on 35-011:

REP. HARRIS said that this bill doesn't go far enough in that the fire assessment fees don't take into account structures. Since the Department recognizes that there is a greater costs to protecting the structure, let's see a better bill in the future.

Mr. Liane said that it does to some extent. Right now the costs are more than the Department has the ability to assess. Otherwise they can't assess the money to pay for their costs. They are talking about other potential laws to assess higher fees in those areas. This could be a tough sell. If they can increase the maximum limit at this time, it allows them to pay their current costs. This is not the end. It is an attempt to get through a time period when the Department is at its maximum.

REP. HARRIS asked why not figure out how to assess the higher costs of the property that has structures on it. **Mr. Liane** said that they need to continue to do that, but he is unsure of how long it will take and they don't want to miss the opportunity to increase their maximum by trying to introduce something that may have difficulty getting through the Legislature. This is the way they felt they would have the ability to cover the costs. **REP. HARRIS** asked how difficult it would be to assess a fee per square foot of a structure. **Mr. Liane** said that they could come up with some proposal, but he is afraid that it will get shot down. There is still forested land out there on which they need to increase the assessment on. The interface area is a separate issue and needs to be addressed separately.

REP. HEDGES suggested that in the proposed legislation there be undeveloped forested land and forested land with improvements. If the bill got in trouble, he would amend out the part that keeps the rest from passing if the bill gets into trouble on the floor. **Mr. MacIntyre** said that they can draft legislation to set up two fee structures.

REP. HARRIS endorses what **REP. HEDGES** offered. **Mr. MacIntyre** said that decision is one that is **Mr. Clinch's** and has not been approved by the Governor.

SEN. McCARTHY said that the Department would have to go through the same steps again.

Mr. MacIntyre said that they could go forward with the recommendation, but would not have to come back if the bill is not segregated out.

REP. HARRIS said that if he will withdraw the motion with the assurance that they will look at better legislation.

MOTION: **REP. HARRIS** withdrew the motion to segregate and agreed to return 35-011 to the pool.

VOTE: Motion to request 35-011 for drafting purposes passed 11 to 2 with **SEN. TESTER** and **REP. BARRETT** voting no.

All bills were requested for the purposes of drafting with the exception of 35-006.

REP. LINDEEN asked if the agencies choose, they can still find a sponsor for the bill that the EQC didn't request for bill drafting purposes.

MR. EVERTS said that the motions passed by the Council just allows bills to be drafted. It just gets the bills into the system, allowing them to pre-introduced.

SEN. TESTER asked if it would be appropriate to request a bill draft by the September meeting addressing the fire fighting costs. **MR. EVERTS** said that the committee declined to pursue those issues earlier in the interim. At this point in time, the EQC generally has bill drafts completed by this meeting with public review between now and September.

• ***Department of Environmental Quality (DEQ)***

See **EXHIBIT 10**

Jan Sensibaugh, DEQ, said that she is going to walk through each proposal on the DEQ priority list. The first bill is to extend the time frame for completion of the total maximum daily load (TMDL) program. This is a federal program that the states are required to do. Montana got sued regarding this program and lost. The court order requires the TMDLs be done within 10 years, which is the statutory time line. This is impossible considering the workload and financial costs. They have discussed this proposal with the plaintiffs, but it first has to be extended in the law. If DEQ doesn't get this extended, the state will fail to complete the TMDLs on time.

MS. PORTER asked if there is any potential for projects to be postponed as a result of extending the deadline. **Ms. Sensibaugh** said that there is. The judge's order says that they can't issue any MPDES or water quality permits until the TMDLs are done. They are trying to get the reaches done where there are activities proposed.

Ms. Sensibaugh said that the next bill deals with the Resource Indemnity Trust (RIT) account funding. The two programs using these funds are the Environmental Quality Protection Fund (EQPF) and the CERCLA account. Because of the decrease of RIT moneys, they are not getting enough money to fund those 2 accounts. If they don't have

the money in those accounts they can't administer the programs. This proposal allows money to be diverted from the Orphan Share account.

SEN. TESTER asked if there is more money in the Orphan Share than they need.

Ms. Sensibaugh said that is correct for now. There is \$4 million in the Orphan Share account and only 2 projects that have qualified for the program.

SEN. McCARTHY asked how much the director is recommending taking out.

Ms. Sensibaugh said \$1 million.

SEN. TESTER asked why there are only 2 applicants. **Ms. Sensibaugh** said that there could be lots of sites around the state. The process is complicated. Part of the problem is identifying all the potential liable parties. It is up to the parties at the site to initiate the process to get an orphan share account. They tend to end up in court prior to getting through the process.

REP. HEDGES asked about revenue coming into the Orphan Share account. **Ms. Sensibaugh** said that the funds come from taxes, the RIT and the metalliferous mines tax. **REP. HEDGES** asked, when this tax is established, is this included as part of the rationale for levying that tax on the miners. **Ms. Sensibaugh** said no.

SEN. McCARTHY said that at present that money can only be used for specific things listed under the law.

SEN. McCARTHY asked if the law has to be changed in order for the director to divert the money. **Ms. Sensibaugh** said that it does. It is in a proposal for the special session.

Ms. Sensibaugh said that third legislation request has been withdrawn. The fourth one is an underground storage tank act to provide rule-making authority to establish rules on how they are going to close sites. Currently there are sites where the agency has done what they can to clean the site up, but there is nothing left that they can do and there is still contamination. There is not a way to get those sites into a category to monitor the site. This would allow the Department to create a category of underground storage site,

so that they could put these sites in a storage or maintenance mode so that they don't have to continue spending money even though there is nothing left that they can do.

SEN. TESTER asked if this would give the Department an easy out for not closing a site.

Ms. Sensibaugh said that it would stay on the deed and title, but the owner would get a letter from the DEQ telling what is happening and giving them more latitude of what they can do with the property. **SEN. TESTER** asked how many sites there are that this would apply to.

Ms. Sensibaugh said that there are quite a few.

SEN. McCARTHY said that she would also like to have the locations of the sites.

REP. HARRIS said that the letter to the owner is important to let people know that everything that can be done has been done, so that it doesn't impede the use of that property.

Ms. Sensibaugh said that is what they are going to do with this bill.

SEN. McCARTHY asked if this needs to be tied in with federal law. **Ms. Sensibaugh** said that often the sites can't be closed because of the water quality contamination, but they can do a no further action letter under the statutes.

Ms. Sensibaugh said that they have recently discovered that the petro fund is in debt. They don't have enough money to cover the claims that are out there. They have taken out a loan to cover the shortfall. They decided to propose an increase of 1/4 cent per gallon fee on the current gas tax that funds the petro fund.

REP. HARRIS said that this is the legislation that the EQC passed this morning.

Ms. Sensibaugh said that requests 6 and 7 were withdrawn. No. 8 is an amendment of the Asbestos Control Act. This is legislation that is to fix an audit exception that they received. The statutory requirement is that the Department assess fees that cover the costs of the program. This would amend that to set up the accounts so that they can

figure out the actual costs of administering this program, allowing them to fix their audit exception.

MS. PORTER asked if this would increase the annual fee. **Ms. Sensibaugh** said that they need to get some data to figure out where the fees need to be set. They don't see a need to increase the fees.

SEN. TESTER asked if this could result in lowering of fees. **Ms. Sensibaugh** said that it could.

Ms. Sensibaugh said that No. 9 is an amendment of the Water Quality Act. Currently, the statute only allows a permit holder or application appeal to the board or court a department decision on that application or permit. They need the ability for interested parties to appeal to court. This provides the statutory language to allow interested persons to appeal to court on a water quality permit. They will define interested person as it is in the Water Quality Act.

REP. HARRIS asked if EPA cares about this because it is in the Clean Water Act.

Ms. Sensibaugh said that it is part of the public participation in the Clean Water Act.

REP. HARRIS asked why the regulations weren't in compliance to begin with.

Ms. Sensibaugh said that this was done a while ago. The state just didn't want anybody appealing a permit decision by the Department and they wanted to limit the appeal process to those impacted by the decision.

REP. HEDGES asked how this would be drafted that is a compromise from where we are today to satisfy the judge so that we don't go back to if I am angry with someone I appeal their permit. **Ms. Sensibaugh** said that it would be done through the definition of interested person.

REP. HEDGES asked when they can see that definition. **Ms. Sensibaugh** said that they would start drafting and bring it back to this committee. They would also add a section to the statute that allows an interested person to appeal to the court.

MR. EBZERY asked if the reason they got in trouble was that there was no definition of interested person in the statute. **Ms. Sensibaugh** said that they had an interested person appeal a decision. The Department argued that the interested person didn't

have the standing to appeal that. The judge didn't allow that. **MR. EBZERY** asked how the definition will be greeted by EPA. **Ms. Sensibaugh** said that they probably won't like it, but will ultimately accept it.

Ms. Sensibaugh said that 10 is the requirement of the EPA to amend the Hazardous Waste Act to provide authority to adopt rules for the availability of information requirement, where someone can appeal under the federal requirement for availability of information. This is an area where EPA said that we didn't meet the federal requirements.

MS. PORTER asked how soon Montana will have primacy. **Ms. Sensibaugh** said that this is the only remaining issue that needs to be resolved.

Ms. Sensibaugh said that 11 deals with the air quality penalties. They have had quite a few people interested in getting loans for alternative energy projects from the fund established through these penalties. They are proposing to increase the loan amount so that it will be more attractive to people. **SEN. TESTER** asked if there is any limit on the loan. **Ms. Sensibaugh** said that now it is \$10,000. They would put in statute a limit. **SEN. TESTER** asked if there have been any takers on the loans. **Ms. Sensibaugh** said that there had been.

SEN. McCARTHY asked if there was any interest, but there wasn't enough money.

Ms. Sensibaugh said that they had heard that. **SEN. McCARTHY** asked what kind of money those people are looking at. **Ms. Sensibaugh** said she can get that information.

SEN. McCARTHY asked for the type of loan. **Ms. Sensibaugh** said it was for commercial alternative energy projects to provide a mechanism for small businesses.

SEN. TESTER asked if it would apply to commercial production. **Ms. Sensibaugh** said it would not. **SEN. TESTER** said that when this bill was passed he assumed the loans would be low interest and they could get the rest from the bank. The \$10,000 would be the beginning or seed money.

REP. HARRIS asked how much is in the account. **Ms. Sensibaugh** said \$150,000 currently. **REP. HARRIS** asked how quickly is it growing. **Ms. Sensibaugh** said there was a penalty from Conoco that caused the account to increase quickly.

Ms. Sensibaugh said that 12 is to provide legislation to allow the procedures for public entities to procure and contract for energy efficiency services in public buildings using a performance contracting approach with qualified companies.

REP. HEDGES asked how this ties in with the Universal Systems Benefits Programs (USBP).

Ms. Sensibaugh said that the only company in the USB is Montana-Dakota Utility (MDU) and they have been allowing most of the money to go to the Department of Public Health and Human Services (DPHHS) to fund low income loans rather than put it into this program.

REP. HEDGES asked why only MDU. **Ms. Sensibaugh** said that it was because of the reorganization and deregulation. **REP. HEDGES** asked if Pacific Power and Light (PPL) did not pick up the Montana Power obligation for the USBP. **MR. EVERTS** said that there wasn't an obligation on the part of PPL for USB. It now rests with NorthWestern Energy. They have the ability to self direct that money within their service territory. If the total amount isn't self directed, the state accounts receive the money. MDU was the only one that didn't self direct all the funds.

Ms. Sensibaugh said that 13 is the \$3 million authority that they get to issue state general obligation bonds for energy efficient improvements in state-owned buildings. This is a long standing ongoing program that they have to come to the Legislature every year to get.

Ms. Sensibaugh said that 14 is a proposal to amend the Public Water Supply Act to change the membership for the Drinking Water State Revolving Fund Advisory Council. This is at the request of the Legislative Services Division, to better facilitate legislative representation.

SEN. McCARTHY asked if there is currently representation on the Council. **Ms. Sensibaugh** said that there is, but it is very hard to find people to serve.

Ms. Sensibaugh said that 15 is a proposal to amend the Montana Radon Control Act. It is a request of the Legislative Audit Division.

No. 16 is to modify the wood stoves provisions in the act. There are rules that allow certification and emissions standards for wood stoves. When this was first passed, Oregon was the only state doing emissions testing. The federal government does this and they need to be allowed to use the federal standards for wood stoves. The Oregon standards don't exist anymore.

SEN. McCARTHY asked if the old pellet stoves qualified. **Ms. Sensibaugh** said that they did not. All the stoves now have a tag that says what the emissions are. The Department provides a list of the rates that qualify.

MS. PORTER said that this only applied to the new stoves. **Ms. Sensibaugh** said that was right.

Ms. Sensibaugh said that 17 was withdrawn. No. 18 is a housekeeping bill for the language of the Underground Storage Tank Act. It was restructured and needs to be cleaned up to make sense and work smoothly for department staff.

No. 19 is for the Underground Storage Tank Act. The fees are set in statute. They want to change the act so that the authority for fees is accomplished through rule-making at the Department level. The Department of Revenue has a one stop program for licenses. They want to include the underground storage tank fees in this, but they need to increase the fees to pay for this.

SEN. TESTER asked if the fees are changed in rule would they be changed for everybody.

Ms. Sensibaugh said that everybody has to use the one stop. **SEN. TESTER** asked what would be wrong with changing the code to set the fee. **Ms. Sensibaugh** said that they can't respond to the need for an increased fee in a timely manner.

Ms. Sensibaugh said that 20 is to amend the state revolving fund sections of the Montana Water Quality Act and the Public Water Supply Act to make the law consistent with the federal law. This is a place holder. If Congress doesn't change these acts, this would be withdrawn.

No. 21 is also a place holder to add authority for the Department to develop and adopt rules regarding technical and managerial functions for public water supplies. They are federally required to do this, but the statute doesn't authorize them to do this.

No. 22 was withdrawn. No. 23 is amendments to the Open Cut Mining Act. Currently open cut mining is getting to be contentious and is taking a lot of time. There are only 3 staff on this. Because of all the MEPA and public relations work, they are not getting the work done. The contracting association and the gravel pit owners have said that they will support a fee increase.

No. 24 was also withdrawn.

MOTION/VOTE: REP. HARRIS moved to allow these bills to go forward. The motion passed unanimously.

MR. EBZERY asked that the definition of interested person be forwarded to MR. EVERTS to distribute to the Council members.

X OTHER BUSINESS

REP. HARRIS said that there isn't a response from the FWP regarding how they were planning to use the rule for seasonal recreation activities.

SEN. McCARTHY said that if there isn't a response by September 1, the EQC will send them a reminder.

REP. HARRIS said that the letter to the Governor regarding meth lab cleanup was a success. There was a meeting with all the parties involved.

REP. BARRETT said that she hasn't seen a response to a letter from the FWP that **MS. EVANS** drafted. She also hasn't seen a response from the legal opinion that **MR. EVERTS** wrote.

MR. EVERTS said that they agreed with what was in the opinion. The FWP also stated that it had developed a response to the letter. **MS. EVANS** said that the FWP did agree with **MR. EVERTS'** opinion. Mr. Hagener said that the opinion answered a lot of the questions of the letter. **REP. BARRETT** asked if the issues in the letter and the legal opinion were the same. **MS. EVANS** said that she hasn't compared the two side by side. She can do that and if there are unanswered questions or issues they can request a formal written response. **REP. BARRETT** said that she is satisfied at this point.

XI CONFIRM LOCATION OF THE NEXT MEETING AND INSTRUCTIONS TO STAFF

SEN. McCARTHY said that the next meeting is September 12 and 13.

XII ADJOURN

There being no further business, the meeting was adjourned.