



ENVIRONMENTAL QUALITY COUNCIL

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Todd O'Hair

HOUSE MEMBERS
DEBBY BARRETT
NORMA BIXBY
PAUL CLARK
CHRISTOPHER HARRIS
DONALD HEDGES
JIM PETERSON

SENATE MEMBERS
DANIEL MCGEE
WALTER MCNUTT
GLENN ROUSH
ROBERT STORY
KEN TOOLE
MICHAEL WHEAT

PUBLIC MEMBERS
THOMAS EBZERY
JULIA PAGE
ELLEN PORTER
HOWARD STRAUSE

COMMITTEE STAFF
KRISTA EVANS, Research Analyst
LARRY MITCHELL, Research Analyst
REBECCA SATTLER, Secretary
TODD EVERTS, Legislative Environmental Analyst

ENVIRONMENTAL QUALITY COUNCIL June 16 and 17, 2003 State Capitol, Helena FINAL MINUTES

COUNCIL MEMBERS PRESENT

SEN. WALTER MCNUTT
REP. DEBBY BARRETT
REP. CHRISTOPHER HARRIS
REP. JIM PETERSON
SEN. GLENN ROUSH
SEN. DAN MCGEE
REP. PAUL CLARK
REP. DON HEDGES
REP. NORMA BIXBY
SEN. ROBERT STORY
SEN. KEN TOOLE

MR. TOM EBZERY
MS. JULIA PAGE
MS. ELLEN PORTER
MR. HOWARD STRAUSE

COUNCIL MEMBERS EXCUSED

SEN. MICHAEL WHEAT (on June 17)
MR. TODD O'HAIR

STAFF MEMBERS PRESENT

MR. TODD EVERTS
MR. LARRY MITCHELL
MS. KRISTA LEE EVANS
Ms. Diane McDuffie, Secretary

AGENDA

[Attachment 1](#)

VISITORS' LIST

Attachment 2

ROLL CALL SHEET

Attachment 3

COUNCIL ACTION

- Approved minutes from Environmental Quality Council (EQC) meeting of September 12, 2002.
- Approved sending a letter to Department of Environmental Quality (DEQ) regarding the permit for tire burning in Gallatin County.
- The Department of Natural Resources and Conservation (DNRC) will work with MR. EVERTS and MS. EVANS in trying to highlight items that the DNRC has deemed important and try to assist the committee with reports.
- MS. EVANS will send copies of the State Water Plan, Water Marketing Report and a bibliography of existing resources that deal with water related issues to committee members prior to the October meeting.
- Approved general work plan resource allocations subject to Chair and Vice-Chair modifications.
- Adopted interim calendar.
- Created an agency oversight subcommittee and an energy working group subcommittee.

I. CALL TO ORDER

Council members introduced themselves. Secretary noted roll.

II. ADMINISTRATIVE MATTERS

- ***Introduction of staff***

Staff members introduced themselves.

- ***EQC Budget Overview***

MR. EVERTS reported that as part of the reductions during the legislative session, the (EQC) is budgeted for one less meeting during the 2003-2004 interim. The committee will only have six more meetings. For information on mileage, lodging and meals refer to the budget spreadsheet.

(Exhibit 1).

III. COUNCIL AND STAFF RESPONSIBILITIES

- ***Purpose of the EQC/Statutory Duties***

MR. MITCHELL gave an overview of the purpose of the EQC and its statutory duties. The reorganization of the Legislature in 1999 and 2001 formally placed interim committees in statute. The EQC is the legislature's interim committee that acts as an oversight committee for DNRC, Department of Fish Wildlife and Parks (DFWP) and DEQ. The specific statutory duties and obligations are listed in *A Council Member's Guide to the Environmental Quality Council*, Appendix D. **(Exhibit 2).**

- ***EQC Draft Rules and Procedures***

MR. EVERTS discussed the rules and procedures that need to be adopted or modified. The rules and procedures adopted in the 2001-2002 interim are listed in Appendix F of **Exhibit 2**. MR. EVERTS also recommended a modification due to passage of HB 94 during the 2003 Legislative Session. HB 94 revises public participation in public meetings and applies to interim and statutory committees. The committee must allow for public comment for items that are not on the agenda.

- ***EQC Decisionmaking Process***

MS. EVANS explained that the purpose of the decisionmaking process discussion is an effort to make sure members know how decisions will be made.

SEN. MCNUTT said the committee will attempt to obtain consensus but will operate under majority vote.

- ***EQC Subcommittee Formation Criteria***

MS. EVANS referred to the Criteria for Establishment of Subcommittees or Working Groups document (**Exhibit 3**). In the past, the EQC has utilized subcommittees with varying degrees of success. An overview was performed and a list of criteria was provided to help decide when an issue might be assigned to a subcommittee.

MR. EBZERY said that he does not believe in the subcommittee system and would prefer to utilize the time by meeting together as a body.

REP. BARRETT asked if the committee needs to provide any reports. MS. EVANS said that there are some reports that are statutorily required. Depending on how the committee will function with the studies assigned, there are reports associated with those and they will have to report back to the Legislature.

SEN. MCNUTT recommended addressing subcommittees and working groups after the work plan has been finalized.

- ***Staff/Council Mission, Responsibilities, and Role***

MR. MITCHELL discussed the mission, responsibilities and role of staff and Council. For more information see **Exhibit 2** pages 3 through 9.

IV AGENCY PRESENTATIONS

- ***Department of Environmental Quality (DEQ), Jan Sensibaugh, Director***

Ms. Sensibaugh provided to the committee a DEQ Handbook 2002 (**Exhibit 5**). The handbook contains an organizational chart, goals and objectives and a contact list. The DEQ is responsible for administering state and federal environmental laws that protect the air, land and water. There are four major divisions and two boards: Planning, Prevention & Assistance; Permitting & Compliance; Remediation; Enforcement; and the Board of Environmental Review and Petroleum Tank Release Compensation Board. A briefing was provided on high profile issues currently before the DEQ that included TMDLS, coal bed Methane, Holcim and Roundup power plant air quality permits, Beal Mountain mine reclamation, mine bonding, Libby, Troy, & Milltown dam reclamation, and others.

John Arrigo, Enforcement Division Administrator, provided an outline of his discussion (**Exhibit 6**). The DEQ would like to form a work group to evaluate enforcement authority and draft proposed legislation to strengthen enforcement authorities, add administrative penalties and update penalties. The DEQ requests the EQC's assistance at any level, including suggestions on work group members, subcommittee oversight, active participation or facilitation.

Ms. Sensibaugh provided a copy of "TMDL Contracts" for 2003 (**Exhibit 7**).

· **Department of Natural Resources and Conservation (DNRC), Bud Clinch, Director**
DNRC is the natural resource management agency. The DNRC implements a wide variety of programs related to natural resources. The DNRC is primarily a field organization with 38 separate field offices. There are six major divisions: Trust Land Management, Water Resources, Forestry, Conservation and Resource Development, Oil and Gas Conservation and Reserved Water Rights Compact Commission. Mr. Clinch provided the committee with the DNRC 2002 Annual Report (**Exhibit 8**). Mr. Clinch listed high profile issues currently before the DNRC including development of the Otter Creek tracts, land banking, urban state lands development, habitat conservation plan, old growth forest management rules, and the HB 537 sustained yield timber study.

· **Fish, Wildlife & Parks (FWP), Jeff Hagener, Director**
Mr. Hagener provided the committee with three handouts: FWP Organization structure, Map of Commission Districts and FWP 2002 Annual Report (**Exhibits 9, 10 and 11**). The FWP has a five-member oversight commission appointed by the Governor. The Commission sets fish and wildlife regulations, approves property acquisitions and approves certain rules and activities of the Department as provided by statute. The FWP is divided into three primary function areas: Chief of Staff, Chief of Field Operations and Chief of Administration & Finance. Three quarters of staff are in the field. Issues of concern include elk management plan updates, endangered species plans, river recreation advisory group, sunseting of block management program and habitat Montana program, and decreases in the number of youth licenses sold.

V. MONTANA WATER CENTER UPDATE

Sue Higgins, M.S. Communications Coordinator, Montana Water Center, provided the committee with a report from the Montana Water Center (**Exhibit 12**). The Montana University System Water Center is located at MSU-Bozeman. The Water Center's core activities are taking place within four federally-funded programs: Water Resource Program, Whirling Disease Initiative, Small Systems Technical Assistance Center (TAC) and Wild Fish Habitat Initiative.

VI. INTRODUCTION AND REVIEW OF INTERIM WORK PLAN OPTIONS

MR. EVERTS explained to the committee the Work Plan Matrix (**Exhibit 4**). The work plan is a decision-making tool for the committee to help prioritize and provide direction to staff. The work plan consists of statutorily assigned duties, topics generated by committee members and study resolutions. Each topic has four options for resource intensity. The matrix also provides guesstimates in terms of FTE allocation.

TUESDAY, JUNE 17, 2003

VII. RECONVENE COUNCIL MEETING

SEN. MCNUTT reconvened the meeting at 8:35 a.m. on Tuesday, June 17, 2003

VIII. ELECTION OF THE EQC CHAIR AND VICE CHAIR

Secretary took a roll call vote (**Exhibit 13**). SEN. MCNUTT was elected Chairman and REP. CLARK was elected Vice Chair.

IX. CONTINUE ITEM VI – REVIEW AND DISCUSS WORK PLAN

· ***Water Policy***

MS. EVANS explained the Water Policy section of the matrix refers to statutory responsibilities. Option C is mandatory duties only. Option B is all of option C in addition to selected water issues as well as an update of the water rights handbook. Option A would include a significant commitment to water issues, a thorough report to the Legislature on Montana's water policy and any potential legislation.

MR. STRAUSE asked how many FTE were needed on water policy last interim. MS. EVANS explained that last interim the FTE was over allocated and two staff persons were also working on water policy. MR. EVERTS said that .4 FTE was allocated and .3 FTE was used.

MS. PAGE asked if the water policy publication from DNRC is updated every year. **Mr. Stults** said that DNRC has a statutory responsibility to produce a state water plan. The department is not currently focusing on developing a chapter of the state water plan.

· ***EQC Statutory Duties***

MR. MITCHELL discussed the statutory duties found on pages 4, 5 and 6 of the *2003-2004 EQC Draft Work Plan* (**Exhibit 14**). Section 75-1-324, MCA is the general oversight obligation of the Council. The "no action" option D on the matrix is shaded out because some action must be taken. The Council can perform most of the oversight obligations by doing some study resolutions. REP. BARRETT asked how many reports are due to the EQC this interim. MR. MITCHELL said about 5 or 6.

Dave Burch, State Weed Coordinator, Department of Agriculture, explained that due to recent vacant positions the department feels this would be an excellent opportunity for MEPA training. MR. EVERTS said EQC has not done formal MEPA training for two interims. The Department of Administration has a professional development program and they may be developing their own course.

· ***EQC Publications***

MR. EVERTS explained that over the years the EQC has created educational publications in addition to publications created as a result of studies. Option B includes updating publications that require minimal effort. Option A includes updating the Permit Index in addition to Option B. The Permit Index is the most widely distributed and asked-for document. It has been updated every interim. The EQC receives between 800 and 1,500 requests for this book. The people using the book are industry consultants, state agencies, federal agencies and the general public.

- ***Agency rule oversight***

MR. EVERTS explained that the Council usually spends a fair amount of time on this topic and last interim created a subcommittee for agency oversight. MR. EVERTS suggested at minimum, Council members receive notices of the rules for the agencies that the EQC oversees.

- ***Energy Policy duties***

MR. EVERTS explained that the energy policy duties are not mandatory. As the need arises, the EQC maintains a process to develop components for a statewide energy policy. MR. EVERTS recommended looking at the energy policy development statutes and where there is overlap, eliminate duplication.

- ***Study of metal mines and bonding requirements***

MR. STRAUSE explained that this topic falls under the requirements of MEPA. There are some serious problems with bonding requirements for metal mines. It's difficult now to find a surety company to write bonds. MR. STRAUSE would like to look at what problems there will be in the future with metal mines, what it costs in terms of bonding, should there be any changes in bonding requirements and will money need to be appropriated in the future to reclaim these metal mines. This topic dovetails with HJR 43.

REP. CLARK recommended obtaining the metal mines report from Roger Lloyd with the Legislative Fiscal Division (LFD) with regards to bonding issues.

SEN. ROUSH said he feels this topic merits action from the committee to look at the metal mines bonding, the efficiencies and what can be done by the Legislature in the future.

- ***DNRC weed management on school trust lands***

MR. STRAUSE withdrew this topic. The State Land Board is going to address this problem.

- ***Wildland Urban Interface***

MR. STRAUSE would like staff to produce a white paper that could be used by urban areas as a road map on how to prevent wildfires around houses.

SEN. WHEAT said he feels this is an issue that should be looked at.

MS. PAGE also feels this needs to be looked at to the identify issues related to urban wildland interface.

SEN. MCGEE said a study was done dealing with this same issue and he feels this issue has already been addressed.

REP. CLARK suggested obtaining a report or presentation to find out what information is available.

- ***"TAKINGS" discussion.***

MR. STRAUSE suggested a brief legal panel to address the law of "takings" in Montana.

- ***Energy efficiency.***

SEN. TOOLE withdrew this topic. The Energy and Telecommunications Interim Committee committed to study this issue.

- **Study potential for Hydrogen development**

SEN. TOOLE suggested that an energy subcommittee address this issue and biomass and wind energy. The College of Technology in Missoula is looking at the hydrogen economy and developing potential hydrogen economy and developing programs for people who understand and are working in that technology.

- **Study potential for biomass and wind energy.**

SEN. TOOLE is interested in looking at bio diesel types of fuel.

MR. EBZERY said the Energy and Telecommunications Committee should be looking at these issues.

REP. HEDGES suggested a presentation from the UofM and MSU-Bozeman on research in biomass and wind energy development studies.

SEN. TOOLE suggested a working group to identify what kind of information is available, a panel discussion and possibly a white paper for the full committee.

- **Study alternatives and process for public input and legal challenges regarding permits and decisions issued pursuant to MEPA.**

REP. PETERSON would like the committee to look at the procedures to better clarify and understand the permit process.

MR. STRAUSE said he thinks the issues were addressed two years ago. Changes were made in MEPA that were designed to streamline the process so that project sponsors would have some finality and what options were available in going forward.

- **Study of alternative energy**

REP. BIXBY said she feels this is an important environmental issue and that Montana has a lot of potential in this area and other energy sources need to be looked examined.

- **HJR 4 – Water Management Practices Review**

MS. EVANS explained that many of the issues identified in this resolution have already been researched. Option D would be a white paper summarizing existing information for the Council to review. Each of the seven options listed in HJR 4 could be a study in and of itself and some of the issues would require some scientific input. Option C would be to identify one area within the resolution the Council wants to focus on. *2003-2004 Environmental Quality Council Draft Work Plan APPENDICES (Exhibit 15)*.

SEN. MCGEE ranked this study as the most important for the committee during this interim. He suggested a broadbrush overview of water management, try to hit all the major topics regarding water management practices and identify areas that need further study. Some critical issues to study are: instream flows, off channel storage including private ponds, coal bed methane, recreational use, water rights, aquifer recharge, water quality, TMDL's and irrigation practices.

SEN. STORY said that the issues in the resolution should be in the DNRC's State Water Plan and the Council could revisit what has been done in the past and see if it needs to be updated.

SEN. WHEAT said the resolution states that the state has the opportunity and a responsibility to take proactive measures to mitigate the impacts of drought and floods by storing surplus water and

promoting efficiency. SEN. WHEAT would like to look at what the state can do in implementing the water polices that have been developed over the years, to help with storing surplus water and promoting the efficient use of water.

MR. EBZERY recommended that SEN. MCNUTT AND REP. CLARK along with staff, work on a blueprint for a plan that allocates 60% to 70% of staff time on this subject.

MS. EVANS said that once the amount of time has been assigned a work plan specific to this study could be put together for the committee to look at before the October meeting.

· ***HJR 43 – Zortman and Landusky water quality study***

MR. MITCHELL explained that HJR 43 is a study of surface water and ground water impacts of the abandoned Zortman and Landusky mine sites on the Milk and Missouri River watersheds and the effectiveness of the state reclamation efforts. Option C would be a panel presentation by agency reclamation officials, citizen participants, and water quality specialists. Option B would be to review the Environmental Impact Statement (EIS) and all other relevant water quality documents available and prepare a white paper as to the status of the water quality.

REP. HEDGES said that the mining company forfeited their bond and the state of Montana will have spent the money by 2010 and are scheduled to have a funding commitment of \$25 to \$30 million out of the general fund. It is not only an environmental concern but also a tremendous financial concern to the state of Montana to mitigate the cost of Landusky.

· ***HJR 35***

MR. EVERTS explained that HJR 35 is a study regarding Montana's share of water from the interstate tributaries and ranked 10 out of 13 in the interim study poll. The two options provided are very low resource options for the EQC. The DNRC would be the primary entity providing the information.

Mr. Stults, DNRC, explained that the Yellowstone River compact has been in place since 1951. The compact has a commission that meets annually and they are aware that there is a problem. The DNRC would like to put together a reconnaissance study to give more credibility that the problem does exist and hopefully find a practical solution that will meet the needs of both states.

· ***HJR 40***

Study the effect of ponds on water use. MS. EVANS explained this resolution is specific on what questions need to be answered, the entities to involve in the study and a report is required.

MR. STRAUSE said spending 75% of staff time on water related issues would be 1.59 FTE. MR STRAUSE proposed spending 50% of that time on water quantity issues and 50% on water quality issues, including TMDL's, coal bed methane, metal mine reclamation, etc. That would leave .53 FTE for other issues.

X. PUBLIC COMMENT

Rich Moy, Chief, Water Management Bureau, DNRC, briefly discussed water policy development and the State Water Plan. The State Water Plan addresses water quality, fisheries, and recreation, water rights and water quantity issues. The plan identifies the problem, identifies a number of solutions, recommended solutions, how to implement the solutions and a timeline for implementation. Since 1995-1996, there has been a disconnect between what the agencies are

doing and policy guidance from the Legislature. There is a greater demand on limited water resources in this state. There are issues out there for which guidance is needed in order to be resolved in a proactive manner. **Mr. Moy** offered the assistance of DNRC staff to the EQC.

SEN. MCGEE asked for copies of all the State Water Plan documents. **Mr. Moy** said there are eight plan sections and he will provide copies to all committee members.

SEN. WHEAT asked what has caused the disconnect between the agencies and the legislative oversight committee. **Mr. Moy** said the state water planning process puts the power in the hands of the people and this committee for making decisions. It takes the power away from people with agencies.

SEN. MCGEE asked for a copy of the Water Marketing Report and also a bibliography of existing resources that deal with water related issues.

REP. CLARK and SEN. MCGEE will work with staff and the DNRC on a list of priorities and put together a plan for the committee to accept or reject.

XI. DROUGHT UPDATE

Lt. Governor Ohs, Chairman of the Governor's Drought Advisory Committee, provided the committee with the following handouts: Surface Water Supply Index, U.S. Drought Monitor, DEQ Public Water Supply Update, National Drought Summary and Montana Drought Monitoring (**Exhibits 16, 17, 18, 19, 20**). The drought status is very mixed across the state but is certainly in much greater shape than a year ago. Some of the problems are the lingering effects of 3 to 4 years of drought and loss of deep soil moisture. Eastern Montana is doing quite well; North Central is doing a lot better; Beaverhead County is still in severe drought; the Northwest is quickly moving in that direction. The drought committee has been meeting with local watershed groups around the state and county commissioner's to get response plans ready.

REP. BARRETT asked what the drought projection is for the next year. **Lt. Ohs** said that it appears that El Niño is weakening. A strong El Niño generally is what brings the dry weather.

XII. ADOPTION OF WORK PLAN OPTIONS

SEN. MCGEE distributed a copy of MR. STRAUSE'S proposal for percentages of time allocations (**Exhibit 21**). The proposal would allocate 60% of FTE's to water quantity and quality issues. The remaining .82 FTE would be working on statutory duties, publications, agency oversight, alternative energy, panel discussions, takings and wildland urban interface.

REP. BARRETT provided the committee with two handouts: Plans Must Address Habitat and FWP Leery of New Wildlife Rules (**Exhibit 22** and **Exhibit 23**). She suggested the committee monitor the development of the new elk management plan as an agency oversight issue.

MOTION: SEN. MCGEE moved Item 1 (of **Exhibit 21**) the allocation to water quantity and water quality be 65% to 70% as follows: 21% HJR4, 14% HJR43, 14% HJR35, 7% HJR40, 7% CBM and 7% TDML.

The remaining items listed under Item 2 (of Exhibit 21) would be 30% to 35% as follows: 10% EQC statutory duties, 1% publications, 10% agency oversight, 2% alternative energy, 1% takings panel, 1% wildland urban interface panel, 5% wildlife elk population and 2% for MEPA. The Council agrees that the Chair and Vice-Chair could alter the allocation numbers after working with staff on the specifics of the work plan.

VOTE: Motion carried unanimously.

SEN. MCNUTT prepared a sign-up sheet for the Energy Working Group and the Agency Oversight Subcommittee.

SEN. MCGEE requested copies of all the chapters of the State Water Plan and a bibliography of existing resources that deal with water related issues.

MR. EVERTS provided a copy of the Montana Environmental Quality Council web page ([Exhibit 24](#)).

XIII. ADOPTION OF INTERIM EQC CALENDAR

SEN. MCNUTT referred to the proposed 2003-2004 EQC Meeting Calendar ([Exhibit 25](#)).

MOTION: REP. HEDGES moved the calendar be accepted.

VOTE: Motion carried unanimously.

XIV. OTHER BUSINESS

• ***Members on the Agency Oversight Subcommittee***

REP. BARRETT
REP. HARRIS
SEN. WHEAT
REP. CLARK
REP. HEDGES
MR. STRAUSE
MR. PORTER

• ***Members on the Energy Working Group***

REP. BIXBY
SEN. MCGEE
SEN. TOOLE
SEN. MCNUTT
MR. EBZERY

REP. BARRETT suggested public comment be the first item on the second day of the meeting and time specific so the public knows when to be there.

SEN. WHEAT discussed the Holcim cement plant in Gallatin County and its application for an air quality permit to burn tires. SEN. WHEAT asked the committee to consider adopting a

resolution to send to DEQ asking the department to undertake an EIS on the proposal. An environmental assessment has been prepared.

SEN. MCGEE would like the DEQ to present the issues on both sides perhaps at the October meeting.

REP. HARRIS said if the committee waits until October the time frame for DEQ to make a decision on an EIS would be long past. If the decision by DEQ is to approve the permit they would be in much better shape if an EIS is conducted.

MR. EBZERY said he thinks it is premature to ask for an EIS but would like to hear about it at the October meeting.

REP. CLARK asked if the committee could ask for information from DEQ regarding the considerations for making the decision as to whether or not there should be an EIS. This could be done as a matter of agency oversight responsibilities.

SEN. STORY asked what kind of actions can this committee take that aren't on the agenda and open to public comment.

SEN. MCNUTT agreed that if the item had been on the agenda there would have been some public comment. SEN. MCNUTT would like to follow REP. CLARK'S suggestion and have a response from DEQ out to the committee before the October meeting.

XV. ADJOURN

There being no further business, the meeting was adjourned.