



ENVIRONMENTAL QUALITY COUNCIL

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CHRISTOPHER HARRIS
WALTER MCNUTT
JIM PETERSON

SENATE MEMBERS
LANE LARSON
GREG LIND
DANIEL MCGEE
JIM SHOCKLEY
ROBERT STORY
MICHAEL WHEAT

PUBLIC MEMBERS
BRIAN CEBULL
KRIS KOK
BUZZ MATTELIN
DOUGLAS MCRAE

COUNCIL STAFF
KRISTA LEE EVANS, Research Analyst
JOE KOLMAN, Research Analyst
CYNTHIA PETERSON, Secretary
TODD EVERTS, Legislative Environmental Analyst

MINUTES

Date: July 18, 2006

Room 102, State Capitol Building

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

SEN. LANE LARSON
SEN. GREG LIND
SEN. DANIEL MCGEE
SEN. JIM SHOCKLEY
SEN. ROBERT STORY
SEN. MICHAEL WHEAT
REP. DEBBY BARRETT (Co-Chairman)
REP. NORMA BIXBY
REP. SUE DICKENSON
REP. CHRISTOPHER HARRIS (Co-Chairman)
REP. WALTER MCNUTT
MR. KRIS KOK
MR. BUZZ MATTELIN
MR. DOUGLAS MCRAE

COMMITTEE MEMBERS EXCUSED

MR. BRIAN CEBULL
MR. MIKE VOLESKY
REP. JIM PETERSON

STAFF PRESENT

KRISTA LEE EVANS, Research Analyst
JOE KOLMAN, Research Analyst
CYNTHIA PETERSON, Secretary
TODD EVERTS, Legislative Environmental Analyst

Visitors

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

COMMITTEE ACTION

- The EQC approved the May 19, 2006, minutes.
- The EQC requested Ms. Evans to draft an EQC bill that would revert Section 82-2-125, MCA, back to how the statute currently reads in HB 609.
- The EQC voted to draft a letter reminding the Attorney General that the EQC had requested an opinion, in accordance with the statute, regarding payment of the water adjudication fee by Montana tribes.
- The EQC approved DEQ's proposed legislation with the exception of proposals 8, 10, 26, and 27 (Exhibit 11) and included an added proposal regarding the Solid Waste Act license fee enforcement.
- The EQC approved DNRC's list of proposed legislation.
- The EQC voted to have the Agency Oversight Subcommittee, and any other interested EQC members, travel to Madison County in August to hear citizen concerns regarding wolf management.
- The EQC requested Ms. Evans and Ms. Cottingham to draft a letter to the congressional delegation regarding the pending Crow and Fort Belknap tribes compacts, and that the EQC Co-Chairmen have the authority to review and approve the letter.

CALL TO ORDER AND ROLL CALL

00:00:01 Co-Chairman Harris called the meeting to order at 8:06 a.m. The secretary noted the roll ([Attachment 3](#)).

AGENDA

APPROVAL OF MINUTES

00:00:41 Rep. McNutt moved to approve the May 19, 2006, minutes. The motion carried unanimously by voice vote.

ADMINISTRATIVE MATTERS - Mr. Everts

Budget Update

00:00:53 Mr. Everts reviewed the EQC budget and reported a balance of \$32,925.61.

SUBCOMMITTEE REPORTS

Agency Oversight Subcommittee

00:02:01 Rep. Barrett provided an update on the Agency Oversight Subcommittee activities. The state has taken over cleanup of the Burlington Northern site and will be billing Burlington Northern. The state is conducting two investigations at the site and is monitoring indoor air and surface soil treatment. The Agency Oversight Subcommittee also addressed the Environmental Impact Statement (EIS) time frames for the Golden Sunlight Mine. The EIS has been ongoing since 2003 and the mine has paid for the EIS. The question is whether the pit should be filled. The Department of Environmental Quality (DEQ) is having difficulty finding competent consultants. The EIS should be completed in September and go out for public comment and a Record of Decision (ROD) should be available in October. The Agency Oversight Subcommittee also addressed the DEQ transfer of the regional haze program to the Environmental Protection Agency (EPA). Permitting will no longer be done by the state and will now be done by the EPA. The Agency Oversight Subcommittee reviewed and compiled proposed recommendations and its draft report on improving the superfund process, and the report will go out for public comment. The report and recommendations will be finalized in September.

Study Subcommittee

00:07:53 Rep. McNutt reported on Study Subcommittee activities. The Study Subcommittee received a report from Mary Sexton, Director of the Department of Natural Resources and Conservation (DNRC) on surface water and ground water and the DNRC, at this point, did not present a bill draft request. The Study Subcommittee also received a Clark Fork Task Force report. The Study Subcommittee then heard a Total Maximum Daily Load (TMDL) summary update from the DEQ and the work is being completed on schedule. Public testimony was received from the EPA indicating the court deadlines might not be met due to a lack of funding. The Study Subcommittee also received an update on the trust land study by the DNRC. The Study Subcommittee approved legislation which states the funds generated by Morrill Act trust lands cannot be used to pay for administration. The Study Subcommittee did not approve the account combo bill since there was language in the bill that still needed to be worked on. The DNRC will go forward with the bill without approval by the Study Subcommittee. The water policy study report was sent out for public comment and approved. The Subcommittee reviewed bill drafts regarding HJR 10, the fire study, and approved the bill draft requests. In addition, Rep. McNutt reported the contract timber harvest white paper went out for public comment.

00:13:44 Sen. McGee inquired whether the Study Subcommittee discussed implications of the timber harvest concept on private timber companies. Rep. McNutt responded that issue had always been a part of the dialogue, and industry did not object since industry could benefit. Sen. McGee asked whether the Study Subcommittee discussed water rights permitting for wells less than 35 gpm. Rep. McNutt replied the Study Subcommittee did not address that issue. Ms. Evans clarified DNRC's surface water/ground water working group is concerned about the exempt wells and that the issue will be part of the working group's discussion in the future.

HB 790 Subcommittee

00:16:08 Sen. Wheat explained the HB 790 Subcommittee has completed its work. The draft legislation was approved, as well as an educational brochure on split estates. The HB 790 Subcommittee increased the notice to surface owners from 10 days to 20 days, and the notice must be provided prior to surface disturbing activities. The 20-day notice is in addition to the surveyor's 15-day notice. Sen. Wheat explained the Subcommittee's proposed educational brochure regarding split estates. All decisions from the HB 790 Subcommittee were approved by a two-thirds majority (super majority.) The HB 790 report identified items that passed by a majority but did not meet the super majority requirement. Sen. Wheat commented that the HB 790 Subcommittee had a positive experience going out into Montana communities, and there was good public turnout at all the HB 790 Subcommittee hearings.

00:22:16 Co-Chairman Harris asked what the mechanism would be for distribution of the HB 790 Subcommittee's publication. Sen. Wheat explained it was the HB 790 Subcommittee's intent to have the publication be sponsored by the EQC and to also be available on the Montana Board of Oil and Gas Conservation's (MBOGC) and DNRC's websites and hard copies would be available at County Clerk and Recorder offices. Sen. McGee recalled there was also a requirement that whenever there is entry for proposed seismic activity or proposed oil and gas operations, a copy of the brochure and law must be distributed to the landowner. Co-Chairman Harris asked whether it would be a requirement in law. Sen. Wheat explained the brochure would be developed with present law and, if legislation ultimately passes, the brochure would be updated. Sen. Wheat thought the brochure was critically important regardless of whether the law is changed. Sen. McGee added if the bill is passed, it provides in two different places that the brochure and a copy of the law must be provided to the landowner.

00:25:50 Rep. McNutt had questions about the surveyor and the 15-day notice requirement. Sen. Wheat explained under current Montana statute, a surveyor is required to give 15-day notice. Sen. McGee explained seismic exploration and the use of surveyors. In cases with boundary situations, the surveyor is registered, and they are subject to the 15-day notice requirement which can be waived by an oral or written agreement. Rep. McNutt asked if there is a notice requirement for location of pipelines. Sen. McGee clarified if it involves a professional surveyor, the surveyor must have permission from the landowner to enter the property. Sen. Wheat added sometimes the landowner is out of state

and notice has been sent to the landowner, but not relayed to the land user. Rep. McNutt stated he was supportive of having a brochure because there is a lot of confusion. The HB 790 Subcommittee will be recommending legislation and publication of the brochure to the full EQC in September.

Public Comment

No public comment was offered.

00:31:47 Mr. Everts noted all subcommittee reports and legislation must be ready for final EQC action before September 15, 2006.

WATER RIGHT OWNERSHIP RECORDS UPDATE - DNRC

00:32:53 Ms. Evans explained how the panel discussion at the last meeting indicated water rights ownership records were falling through the cracks and need to be kept accurate. The issue is how to keep ownership records up to date in order to ensure DNRC's database is accurate.

00:33:43 Mary Sexton, Director, Department of Natural Resources and Conservation, identified routine education as important and explained education has been occurring throughout the state. The DNRC has met with title companies and realtors to discuss ownership updates. Director Sexton identified various options being investigated, including reducing the ownership update fee, creating an escrow account to pay for the ownership updates, increasing the penalty for failure to file, creating an ownership update form for electronic filing, changing the law so the buyer is responsible for the filing, utilizing the Natural Resource Information System (NRIS) website, and utilization of a geo code. Director Sexton suggested using an electronic filing process would make the system more efficient and accurate. Director Sexton identified the most effective and controversial approach as making it impossible to file the deed until the water right is transferred.

00:42:47 Sen. Shockley stated he was glad to see a liaison between the DNRC and the Department of Revenue (DOR). Sen. Shockley would like to see a system with communication between the DOR and the DNRC where the water right is automatically transferred.

(Tape 1; Side B)

Sen. Shockley noted in less than one percent of the time, the water right is reserved and not transferred, so there would be a need for a manual override in that instance. Director Sexton explained Sen. Shockley's idea of using the geo code approach, and stated DNRC is considering using that approach. Director Sexton expressed a need to discover the best process. Sen. Shockley suggested the statute could require the water right to go with the land automatically, and it would be incumbent on the seller to file a piece of paper with DNRC stating he retained the water right.

- 00:46:21 Sen. Story thought the situation would be complicated no matter what, but thought the parties were headed down the right road. Sen. Story foresaw a problem with the geo code being used because a geo code is for the parcel of water and a parcel could have more than one water right. Sen. Story warned of problems occurring when property gets divided. Sen. Story thought going to the buyer and the person who will have the interest in the water right would be a good idea. The seller should then be responsible when the water right is severed.
- 00:48:56 Sen. McGee identified one problem with geo codes as being that geo codes were created without respect to legal description. Sen. McGee suggested geo codes are sometimes not accurate and cannot be used in lieu of a legal description of the land. Sen. McGee encouraged the DNRC to remember that people do not own geo codes, and that the water right needs to be attached to the legal description. Director Sexton agreed and thanked Sen. McGee for his input.
- 00:51:48 Rep. McNutt reminded the EQC the most important parts of HB 22 were timing and accuracy of data. The database had become corrupt because people have not followed through. Rep. McNutt's biggest concern was maintaining accuracy. Rep. McNutt was encouraged and believed title people needed to be part of the process. Rep. McNutt cautioned somebody would need to be responsible for completing the transfer or the database would become worthless. Rep. McNutt thought the responsibility should be with title companies and realtors.
- 00:54:23 Sen. Wheat thought the problem should be addressed when there is a willing seller and willing buyer together in a room, and there should be a focus on transferring the water right at closing.
- 00:55:09 Co-Chairman Harris asked Director Sexton whether DNRC would come up with legislative recommendations. Director Sexton replied she would come to the EQC with proposed legislation in September.

SECTION 85-2-125, MCA, COORDINATION ISSUES--Ms. Evans

- 00:56:04 Ms. Evans addressed coordination issues with Section 85-2-125, MCA, and submitted a copy of HB 308 (**EXHIBIT 1**) and a copy of HB 609 (**EXHIBIT 2**). Ms. Evans outlined EQC's options as explained in her memorandum to the EQC dated July 5, 2006 (**EXHIBIT 3**). Ms. Evans' recommendation was to request a bill to amend Section 85-2-125, MCA.
- 00:58:40 Sen. Shockley pointed out that if the EQC made the mistake, the DNRC should not have to correct the problem. Co-Chairman Harris asked whether there was clear legislative intent. Ms. Evans was hesitant to say there was clear legislative intent and that she would have assumed that after July 1, 2005, the second version would have applied. Sen. Story suggested EQC should bring a bill out to fix the problem, and the Legislature could pass the legislation or not.
- 01:01:07 Sen. McGee moved that Krista draft an EQC bill that would revert the section of law back to how it currently reads in HB 609.

Public Comment

No public comment was offered.

- 01:02:11 Sen. McGee's motion carried unanimously by voice vote.
- 01:02:40 Sen. Story asked whose job it was to enforce a water right against someone who does not have a water right. Tim Hall, Chief Legal Counsel, Department of Natural Resources and Conservation, replied DNRC has enforcement authority but does not always have the funding and staff to provide enforcement. HB 609 was intended to empower the water rights holders on a stream, so they could go to court to stop illegal water use. The Judge could then award attorney fees. The DNRC is not mandated to provide enforcement, but does have the authority to bring an action under the law.
- 01:05:43 Sen. Wheat noted the state owns all the water that is not given to someone by a water right and wondered whether there was a mechanism to refer the theft of water to a county attorney if someone was stealing water from the state. Mr. Hall explained DNRC works in conjunction with county attorneys to let them know of situations, but it varies among county attorney offices whether they will spend any time on the case. Co-Chairman Harris requested Mr. Hall to provide assistance to Ms. Evans on the issue.

RESERVED WATER RIGHTS COMPACT COMMISSION - Susan Cottingham, Program Manager

- 01:07:37 Susan Cottingham, Program Manager, Reserved Water Rights Compact Commission, reviewed the status of negotiations and pointed out that under current statute the Compact Commission will sunset in July 2009. Ms. Cottingham believed the Commission had made substantial accomplishments during its thirty-year existence and intended to adhere to the sunset provision. Ms. Cottingham explained the water court is continuing to approve compacts that have been finalized. Two tribal settlements, Crow and Fort Belknap, have passed the Montana Legislature but have yet to go to Congress for approval. Issues with the settlements include federal contribution and questions within the tribes. The new Secretary of Interior Kempthorne has not indicated his position on the issue. The Compact Commission continues to work strenuously on the remaining settlements. The Compact Commission is also working on the Forest Service settlement, which Ms. Cottingham stated has been difficult due to opposing views of legal rights. A mediator has been hired and, if the issue cannot be resolved, the Compact Commission will file an action with the water court. The main issue with the Forest Service settlement has been in-stream flows for fisheries. The Forest Service has agreed to go through the state water reservation process. The Compact Commission agreed to propose changes to state law to help streamline the process, but the Compact Commission cannot bind future legislatures and assure that laws will not be changed in the future. The Compact Commission is also working with the Blackfeet Tribe on the St. Mary's Project. The Confederated Salish and Kootenai Tribes Commission is conducting

substantial background and technical work and will be asking for additional contracted services.

(Tape 2; Side A)

Ms. Cottingham believed legislation would be introduced in 2007 to extend the Compact Commission, and granting the extension would be a policy decision left to the Legislature and the Governor. The Compact Commission is trying to assure the integrity of the compacts is maintained as they are transferred to other entities. An implementation bureau within the Commission would be transferred to the DNRC or the Attorney General's office. The Compact Commission is focusing on the transition plan, so the budget will not go from the current budget to zero. Implementation staff would also gradually go away. Ms. Cottingham emphasized the effects of the climate change and how that will impact the work the Compact Commission has done.

Questions from the EQC

- 01:28:35 Rep. Dickenson requested information on what would happen when unresolved compacts are turned over to the water court. Ms. Cottingham explained that while tribes and federal agencies are negotiating with the Compact Commission, they are suspended from having to file their claims in the state water court. If a party decides not to negotiate, the Compact Commission can certify the matter to the state water court. Rep. Dickenson wondered whether the accomplishments made up to that point would be thrown out. Ms. Cottingham believed the prior work would not be in vain.
- 01:33:05 Sen. Shockley asked whether any of the other entities, besides the Salish and Kootenai Tribe, wanted to extend the Compact Commission. Ms. Cottingham believed the Salish and Kootenai Tribe is nervous since they are at the end of the line. Sen. Shockley asked whether the Salish and Kootenai Tribe is waiting for negotiations to begin. Ms. Cottingham agreed that is the case due to the Compact Commission's workload. Sen. Shockley asked if the Compact Commission could be extended for purposes of addressing the Salish and Kootenai Tribe. Ms. Cottingham was hopeful the Compact Commission would have the work completed by the sunset date, but agreed extending the Compact Commission to address the Salish and Kootenai Tribe would be a possibility.
- 01:36:24 Sen. Story noted the states that have gone to litigation have not been very happy. Sen. Story asked what negotiation is costing the state. Ms. Cottingham replied they budget \$755,000 a year with contracted services, and cases in other states are taking years to litigate at substantial expense. Sen. Story recalled the Attorney General would be the lead litigation attorney for Montana in litigation, and the U.S. Justice Department would be the main player for the tribes. Sen. Story wondered if the tribes would hire their own attorneys. Ms. Cottingham agreed that in all the cases she is aware of, the tribes have hired their own attorneys and technical experts, which would be paid for with federal dollars. Sen. Story asked if Montana is further along than it was in 1995. Ms. Cottingham agreed but noted one exception: The tribes and the Joint Board of Control from

the irrigation project have been negotiating for a transfer of the project from federal control to a joint control between the tribe and the irrigators. Ms. Cottingham believe this represented a fundamental shift, but negotiation has been difficult because of ongoing litigation. Ms. Cottingham believed joint management of water resources in the Flathead was a possibility. Sen. Story commented that putting a date certain on dissolving the Commission may encourage the parties to settle.

- 01:44:19 Co-Chairman Harris requested information regarding the mediation process on U.S. Forest Service issues. Ms. Cottingham explained requests for proposals were sent out, and a mediator from out-of-state was hired. Ms. Cottingham reported both parties are satisfied with the choice and the way mediation is progressing. Co-Chairman Harris asked whether binding arbitration was ever an option. Ms. Cottingham explained binding arbitration was never a consideration. Co-Chairman Harris asked whether it would be helpful for the EQC to send a letter to the Congressional Delegation. Ms. Cottingham thought a letter would be very helpful and stated any correspondence would be welcomed.
- 01:48:23 Rep. Bixby asked Ms. Cottingham to expand on efforts to preserve the integrity of the compacts once the Commission goes away. Ms. Cottingham replied tribal compacts contain a dispute resolution mechanism, and the settlements can be enforced by the court.

Public Comment

No public comment was offered.

BREAK

PAYMENT OF WATER COMMISSIONERS ON ENFORCED STREAMS

- 02:13:24 Ms. Evans explained the panel discussion was organized as a result of concerns voiced to Sen. McGee and Sen. Story. Ms. Evans directed the EQC to the list of issues she requested the panelists to address ([EXHIBIT 4](#)), as well as a memorandum prepared by Ms. Evans which addresses the applicable statutes ([EXHIBIT 5](#)).

Panel Discussion

- **Gallatin Enforcement Project--Dave Pruitt**

- 02:15:13 Dave Pruitt spoke about his duties as a water commissioner on the Gallatin River drainage. Mr. Pruitt expressed concern about the West Gallatin River going dry due to pre-stream interruption by wells in the Gallatin Canyon. Mr. Pruitt explained how as a water commissioner, he is paid for the water he delivers and bills once a year. Mr. Pruitt is responsible for his own expenses until he receives compensation. Mr. Pruitt liked the current situation and the way water commissioners are paid under the current statutes. Mr. Pruitt suggested the situation could be made better in some drainages, but believed the current

situation on the West Gallatin is working well. Mr. Pruitt could not recommend any statutory changes and thought the district court should be in charge of making the system work. Mr. Pruitt testified it is difficult to find a water commissioner and that it is better to appoint someone who is well known in the county. Mr. Pruitt stated it is very difficult to shut off someone's water.

- **Rock Creek Enforcement--Jim Gruber**

02:23:25 Jim Gruber, Chief Water Commissioner for the Rock Creek drainage, is a first-year water commissioner. Mr. Gruber bills approximately 400 water users, including 15 ditch companies, and measures and distributes stored water from Cooney Reservoir and Glacier Lake. Mr. Gruber deals more with stored water than decreed water. Mr. Gruber was impressed with the assistance he receives from the water court, district court, and the DNRC. Mr. Gruber identified how water commissioners are paid as one issue to be resolved.

(Tape 2; Side B)

Mr. Gruber suggested water commissioners should be paid monthly and thought out-of-pocket costs could be difficult for water commissioners to absorb. Mr. Gruber suggested a statutory change allowing for the collection of fees up-front would be helpful, although he admitted it would be difficult to do in statute. Mr. Gruber also suggested the DNRC could budget for water commissioners' operating expenses and be reimbursed at the end of the water year. Alternatively, the Legislature could earmark operating funds for each basin to pay operating expenses. Mr. Gruber also suggesting using surplus money in the general fund or utilizing the coal severance tax.

- **Musselshell Enforcement Project--Peter Marchi**

02:34:43 Peter Marchi, Chief Water Commissioner, Musselshell Enforcement Project, is responsible for 200 miles of river. Mr. Marchi identified a need for operating money. Mr. Marchi decides who gets to take water and when they get to take the water according to the priority date, the amount of water in the river, and who is using water. Events such as rain storms are easier to deal with because of the use of zones on the Musselshell. Mr. Marchi thinks the system works well. Mr. Marchi stated that he works for the water users, and he tries to protect the water users equally. Mr. Marchi has found the water court and DNRC very helpful. Mr. Marchi utilizes an accelerated billing process that runs April through October. Mr. Marchi has found it difficult to work for long periods of time out of his own pocket. Mr. Marchi does a mid-season or interim billing to help alleviate the drain on water commissioners and 80 percent of the users pay within two weeks. Mr. Marchi would like to see a reserve created that water commissioners can operate on initially. Mr. Marchi would only want to charge people who are receiving the beneficial use of the water. Mr. Marchi suggested charging interest on water bills to encourage water users to pay their bills promptly. Mr. Marchi explained that individual zone commissioners reside within the zone they are enforcing. Mr. Marchi believed the process should remain with the district court.

02:53:42 Colleen Coyle, Water Master, Montana water court, explained the various roles the Montana water court plays in the enforcement of water right decrees. Ms. Coyle pointed out there are approximately 50 water commissioners state wide, and over half of the commissioners are distributing water based on old district court decrees, and approximately 20 commissioners are distributing water based on a Montana water court decree. Ms. Coyle explained the approach utilized by water commissioners for distribution of water varies from stream-to-stream, and that the salaries for water commissioners also vary throughout Montana. The district court judge has jurisdiction over water distribution, so the judge appoints the water commissioner. Water commissioners tally their hours and expenses, and these costs are billed to the water users on a pro rata basis. Clerks of court notify water users of their opportunity to object to their bills, but involvement of clerks of court also varies throughout the state. Pay, mileage, and bond are all conditions set forth in the district court judge's order appointing the water commissioner. The major difference between enforcement under a district court decree or a water court decree is the document the water commissioner uses to guide their water distribution. The water court provides any assistance it can by explaining tabulations, providing commissioners with training, and answering any questions.

Questions from the EQC

03:03:28 Sen. McGee requested Ms. Evans to provide a tabulation of the total amount paid by district courts to water commissioners. Ms. Evans directed Sen. McGee to a 2006 salary chart for Montana water commissioners (**EXHIBIT 6**).

03:04:32 Sen. McGee asked Mr. Gruber whether amending the statute to allow for monthly or periodic billing would address the issue. Mr. Gruber pointed out that monthly or periodic billing would result in a need to hire a full-time bookkeeper and increased costs. Mr. Gruber further explained the law already allows for periodic billing. Mr. Gruber also noted water users cannot be billed until they receive their water. While Mr. Gruber believed the issue could be partially resolved by billing more often during the water year, that would require a full-time bookkeeper and would place additional responsibilities on the commissioner. Mr. Gruber would like to see legislative support to gain general fund money, so water commissioners could have up-front operating funds available. Mr. Gruber suggested the funds could then be reimbursed to the general fund at the end of the season, but stated he would prefer not to reimburse the funds. Mr. Gruber identified the appropriation as one-time only.

(Tape 3; Side A)

03:09:33 Rep. Dickenson explained the Legislature is attempting to adjudicate entire basins and wondered how to maintain local connections in such large geographic areas. Mr. Marchi suggested utilizing zones in large basins would help maintain local control and would make it easier to consider priority dates. Mr. Marchi stated a full-time bookkeeper would not be needed in the Musselshell and that having a bookkeeper has been a cost-saving measure since it saves him time.

Mr. Marchi cited a need to have a reserve that can be used for operating expenses, and that the reserve would be paid back at the end of the season.

03:16:42 Rep. Dickenson asked Mr. Marchi if he had any experiences where his district court was not very skillful or was too busy to make decisions. Mr. Marchi replied it would be better to have people who specialize in water law.

03:18:46 Ms. Coyle elaborated that water users and district court judges select the portions of basins that need to have enforcement through the use of water commissioners. The entire basin does not have to be administered as a unitary resource, and enforcement can incorporate entire basins or portions of basins.

03:20:25 Rep. Barrett asked each panel member whether Fish, Wildlife, and Parks (FWP) has an instream water flow and whether they bill FWP. Mr. Pruitt replied FWP does have an instream flow on the Gallatin and FWP is not billed. In addressing funding, Mr. Pruitt suggested the district court could fund the water commissioners and control the funding, and the money could be paid back at the end of the season. Mr. Marchi explained FWP has two rights, and when those rights are filled, FWP is billed and does not complain. Mr. Gruber replied FWP has a few junior rights which have not been filled. Rep. Barrett explained her water commissioner in southwest Montana bills monthly and is paid monthly. Rep. Barrett thought it would be difficult to determine a bill's accuracy if the bill were received at the end of the year. Rep. Barrett pointed out that if bookkeeping was performed monthly, it would not require any extra time, as opposed to doing the entire billing at the end of the season.

03:24:55 Mr. Pruitt clarified the water commissioners are carrying their expenses until the end of the season.

03:25:57 Sen. McGee suggested (1) having the users prepay an appropriate amount into a kitty; (2) making a general fund appropriation; (3) determining whether there are existing funds available or an existing pool of money where a basin could apply for up to 15 percent of last year's cost to gear up. Jack Stultz, Water Resources Division Administrator, DNRC, stated there is no funding available. Mr. Stultz expanded there is no relationship, outside of technical training, between the water commissioners and the DNRC.

03:28:06 Rep. Barrett asked Mr. Stultz whether the money could qualify under a renewable resource grant. Mr. Stultz agreed that could be an option.

03:28:48 Co-Chairman Harris expressed concern that the water commissioners' collective experience may pass on into history. Co-Chairman Harris asked the water commissioners whether there was a way for them to preserve their experience. Mr. Pruitt responded that is why he believes the water commissioner should come from the same area. Co-Chairman Harris wondered if there was a possibility for videotaping training to preserve the experience of the water commissioners. Ms. Coyle agreed that could be arranged. Co-Chairman Harris expressed concern about preserving the current water commissioners' skills.

03:32:02 Sen. Story addressed the financing of water commissioners, and asked who makes the monetary determinations. Mr. Marchi explained the numbers are set by the appropriate district court judge. Sen. Story asked whether there was flexibility under current law to set the fees so a reserve could be established. Mr. Marchi did not believe that was a possibility under current law. Sen. Story asked how commissioners get paid who deal with stored water. Mr. Marchi explained they have their own association and anyone with stored water is assessed a fee. Sen. Story asked Mr. Marchi whether he gets paid at the end of the year. Mr. Marchi responded last year was the first year that he did a mid-season billing, and it worked out to be approximately 60 percent of his annual wage.

Public Comment

03:39:38 Mike McLean, a private citizen, reminded the EQC that what Montana sees today with water is not what Montana will see in 20 years. Mr. McLean urged the EQC to begin thinking about the fact that water flows down hill and the person with the lowest senior right will someday ask for his water. Mr. McLean believed the way water is administered has to change. Mr. McLean believed there needs to be a way to balance local management and work with the larger water basins. Mr. McLean suggested creating a revolving fund for water commissioners.

WATER ADJUDICATION PROCESS OVERSIGHT AND ACTION IF NECESSARY

Governor's Adjudication Fee Proposal--Governor's Office

03:44:03 David Ewer, the Governor's Budget Director, explained the Governor has announced a proposal to suspend the water adjudication charges for those who have paid up to \$400. Mr. Ewer stated the Governor is aware of the importance of bringing the process forward to firm up water rights. Mr. Ewer depicted the state as being in a revenue bubble period because of a dramatic growth in revenues. Therefore, Governor Schweitzer is proposing a refund and to fund the program for five billing cycles. Mr. Ewer identified the process as good as far as gathering data and getting people to recognize the importance of filing their water rights. Mr. Ewer stated Montana can now afford to fund the program, and believed this would be an appropriate use of the money. Mr. Ewer appreciated the efforts being conducted to adjudicate Montana's water.

Questions from the EQC

03:48:54 Sen. McGee wondered if this is a one-time suspension and whether Mr. Ewer believed if revenues go the other way, he would anticipate that the Governor would want to have this as a tool to continue funding the water adjudication system. Mr. Ewer replied Governor Schweitzer is proposing to set aside \$20 million and is not funding a repeal, just a suspension.

03:50:19 Sen. Story noted those who owned less than 20 rights paid \$400 for the biennium and asked if the suspension is for those who paid \$380 or those who paid \$400. Mr. Ewer replied his understanding is the refund is for those who paid

\$400 or less. Sen. Story asked about refunding those people who have already paid. Mr. Ewer stated the rebate would apply to those who have paid.

(Tape 3; Side B)

Sen. Story asked about the cost and mechanics of refunding those payments. Sen. Story also asked what the policy decision was to make \$400 the cutoff. Mr. Ewer identified the decision as an affordability issue. Sen. Story asked Mr. Ewer for an estimate on the cost of doing the refund. Mr. Ewer could not provide a firm estimate, but pointed out the state runs checks every day and is capable of performing the refund. Sen. Story pointed out there would be approximately 184,000 people and \$4 million to be redistributed. Mr. Ewer admitted there would be transaction costs and estimated the cost would be a couple of hundred thousand dollars.

03:56:30 Sen. Wheat inquired why people who paid in could not just simply get a credit on their income tax. Mr. Ewer thought that would complicate the refund process. Sen. Wheat explained there was a consensus on the Water Adjudication Subcommittee that they would have preferred the process be paid for from the general fund but were concerned about the reliability of funding and the ability to complete the process in a timely manner. Sen. Wheat asked whether the money the Governor was proposing would go into a protected fund. Sen. Wheat also wanted to know why the Governor was proposing to put in less than what the subcommittee estimated it would take to complete the adjudication process. Mr. Ewer explained the refund is only for smaller rights, so there is a segment of water rights holders with a lot of claims who will still need to pay. Mr. Ewer could not say whether the \$20 million, plus the amount owed, would equal the total amount estimated by the subcommittee. Sen. Wheat stated it was his understanding the Governor supports adjudication of Montana's water in the time frame contemplated by HB 22. Mr. Ewer explained the Governor is committed to adjudicating Montana's water.

04:01:50 Rep. Barrett noted the Governor's proposal is based on affordability, and suggested larger water users who will still be assessed a fee will pass their fees on to small water users, but small ranchers and farmers with over ten water rights will not be able to pass on the cost. Rep. Barrett requested information regarding the cost of what the Governor's refund will be and how many small farms and ranches with over ten water rights will continue to pay. Mr. Ewer replied there is no definition of "small" but stated he could possibly break out a class but could not make a commitment. Rep. Barrett replied "small" would be ten water rights, and that DNRC has the requested information.

04:05:01 Sen. McGee recalled discussions about equity and that the fee could not just be assessed only to power plants or municipalities. Sen. McGee asked Mr. Ewer to consider whether there could be unintended repercussions as a consequence of making a differentiation regarding who has to pay. Co-Chairman Harris asked about creating an equal protection problem and a resulting lawsuit. Sen. McGee agreed. Mr. Ewer acknowledged the EQC's concern.

- 04:07:20 Rep. McNutt explained the subcommittee could not come up with a legal rational basis to assess the fee to hydro users only. Rep. McNutt believed the Governor's proposal would ultimately result in a lawsuit. Mr. Ewer reiterated he acknowledged the EQC's concern.
- 04:08:32 Sen. Lind noted Montana's progressive income tax where below a certain level people do not have to pay. Mr. Ewer did not address the particular issue and noted the concerns of the EQC.
- 04:09:12 Rep. Barrett recalled Idaho charged a flat fee to every water user straight across the board, but the EQC did not feel that system was equitable.
- 04:09:51 Co-Chairman Harris asked whether the Governor's proposal involved refunds for this cycle or whether the refund applied to future billing cycles. Mr. Ewer's understanding was that in order to get the refund, one would have to pay, but Mr. Ewer could not provide any details.
- 04:12:12 Co-Chairman Harris asked whether the administration will present the EQC with a formal proposal before EQC's September meeting. Mr. Ewer suggested he would have more details to present by September. Co-Chairman Harris suggested passage of the proposal would be easier with EQC support.
- 04:13:51 Director Sexton addressed the proposal and explained the refund applies only to the first billing cycle. In the first cycle approximately \$5 million has been paid and of that amount, approximately \$4 million was paid by water users who paid \$400 or less and who would now be entitled to a refund. Director Sexton explained some water users have not paid and those folks would continue to be billed. Once those water users pay, they would be entitled to the refund. There would be no further billing for those who would be paying \$400 or less. Co-Chairman Harris asked Director Sexton whether DNRC's attorneys shared concerns about equal protection problems. Director Sexton did not have a response, but offered to obtain a legal response.
- 04:16:26 Sen. Shockley asked for clarification that the people who have not paid are going to continue to get billed, and when they do pay, will get a refund. Director Sexton agreed that would be the case but emphasized some of the water rights could be dead ends.
- 04:16:56 Sen. Story asked when the second billing cycle starts. Director Sexton replied the second billing cycle would begin in December 2007, and those fees would be due January 2008.
- Re7:44 Sen. Larson suggested the majority of people with ten rights or less probably do not make a living off their water rights. Sen. Larson thought that would probably address the equal protection issue. Rep. McNutt disagreed and thought a large portion of the affected users were agricultural.

04:19:32 Sen. Shockley suggested a rational basis for assessing the fee to only large hydro users could be that it is not cost-effective to enforce the fee against small users.

**DNRC Update on Claims Examination, Billing, Appeals and Database Progress--
Mary Sexton, DNRC**

04:31:06 Director Sexton reviewed DNRC's Report to EQC, HB 22 Adjudication Progress ([EXHIBIT 7](#)).

04:40:00 Sen. McGee noted the difference between when bills went out and when the first payment was due. Sen. McGee pointed out the first payment was due 35 days after the bills went out; however, the second bill was due only 16 days after bills went out. Terry McLaughlin, Water Rights Bureau, DNRC, explained the schedule is the normal schedule utilized by the DOR for second notices, and typically reminder notices from DOR get fewer days. Sen. McGee questioned the number of invoices appealed under the category of "other" and wondered what the category referred to.

(Tape 4; Side A)

Jim Gilman, Water Rights Bureau, DNRC, explained the category refers to all other purposes not listed, including stockwater rights, domestic rights, individual rights, and irrigation rights. Mr. Gilman was interested to determine how many water rights were for one water right. Sen. McGee expressed confusion as to why individual water rights were left off. Mr. Gilman responded the categories match HB 22.

04:44:12 Sen. Story expressed concern about a recent press release and people's participation in the process and wanted to know if there was a problem meeting the benchmarks. Director Sexton responded it was a warning that DNRC needs responses. Jack Stultz stated DNRC is trying to assure that they do not lag behind, and that DNRC intends to exceed the benchmarks. Mr. Stultz expressed a desire to avoid a problem rather than having to react to a problem.

Water Court Update on Progress--Judge Loble

04:46:20 Bruce Loble, Chief Water Judge, Montana water court, stated the final version of the Water Court's Rules of Practice and Procedure were filed on May 30, 2006, and FWP filed voluminous objections and comments. In particular, FWP objected to the Water Court's 25-year history of not requiring water users to hire attorneys. Judge Loble reported the water court's expansion of office space is substantially complete. The water court has hired two additional lawyers.

Questions from the EQC

04:50:32 Sen. Wheat addressed FWP's unauthorized practice of law allegations and noted people are able to proceed *pro se* in all courts. Sen. Wheat asked if someone other than the water user was representing the water user's interest. Judge Loble

provided an explanation regarding family farm corporations and how they operate. Sen. Wheat asked if there are instances where people without an interest in the water right are coming into the water court and representing the water user. Judge Loble explained various instances where representation by a non-lawyer has occurred but noted that person is usually associated with the water user. Sen. Wheat asked for clarification regarding the problem. Judge Loble directed the question to FWP.

- 04:54:54 Bob Lane, Chief Counsel, FWP, responded to Sen. Wheat's question and explained the unauthorized practice of law has been occurring before the water court for a number of years. Sen. Wheat asked why FWP has a problem with people helping their relatives and neighbors. Mr. Lane stated he did not have a problem with consultants being involved, but identified the issue of unauthorized practice of law as serious.
- 04:57:31 Sen. Wheat asked whether people who are being paid have been appearing before the water court and representing water users. Judge Loble replied consultants occasionally appear, and the water court has asked them to stop. Sen. Wheat asked whether the issue was presented to the Supreme Court in the water court's proposed rules. Judge Loble responded he did not put it in the rules and left the issue open. Judge Loble explained the experience of the water court has been that the process works because the water court decides factual issues. Sen. Wheat noted the decisions of the water court are very important because they relate to people's water rights.
- 05:01:17 Sen. Shockley asked Mr. Lane whether it is Director Hagener's opinion that adding more lawyers would expedite the water adjudication process. Mr. Lane responded that having attorneys involved would aid the process when there are difficult issues to be decided. Mr. Lane believed the issue of unauthorized practice of law needed to be addressed.
- 05:05:33 Sen. McGee asked if FWP is concerned with the validity of a decree that might be based on evidence presented by non-lawyers. Mr. Lane agreed FWP is concerned. Sen. McGee asked whether FWP believes that FWP's water rights are in jeopardy due to the unauthorized practice of law. Mr. Lane responded FWP is concerned as a water user about the accuracy and appropriateness of the adjudication process. Sen. McGee asked if a decree was issued by the water court that FWP had an interest in, whether Mr. Lane would advise his department to seek a legal remedy based, in part, on the fact that FWP believes the water court procedures violated state law. Mr. Lane responded he could not envision a circumstance where FWP would sue based on the unauthorized practice of law.
- 05:10:13 Sen. Story pointed out that one-half of the water rights have been through the process and the second half still needed to go through the process. Sen. Story expressed concern about having half the water rights examined under a different system. Mr. Lane responded they are asking the Supreme Court to make a ruling on whether this procedure should be allowed in the future and reminded the EQC that significant legal issues have yet to come before the water court, and it would be important to ensure people have legal representation. Sen. Story wanted to

know who made the decision to file FWP's objections. Mr. Lane identified FWP's Director as the person who approved the decision. Sen. Story asked about the difference between a consultant and an officer of a corporation providing representation. Mr. Lane believed the issue should be dealt with as it is in other Montana courts. Mr. Lane reminded the EQC that family farm corporations get a number of benefits from being a corporation and should be bound by the requirements they would have to follow in any other Montana court. Mr. Lane also pointed out that the HB 22 and HB 782 process for adjudication has been modified.

05:17:09 Co-Chairman Harris asked whether the issue was squarely before the Supreme Court or whether there was a way it could be bounced back. Judge Loble responded the Supreme Court may or may not deal with the issue. Mr. Lane agreed it is up to the Supreme Court to decide whether it will address the issue, and it is not something the Commission on Practice could address.

05:20:00 Sen. Shockley did not believe the Supreme Court would address the issue. Sen. Shockley suggested the next time FWP is in court with a litigant without an attorney, it should object and force the issue before the Supreme Court. Mr. Lane responded FWP was hopeful the Supreme Court would address the issue.

Update on Request for Attorney General Opinion--Ms. Evans

05:21:20 Ms. Evans referred to e-mails regarding the requested Attorney General's opinion (**EXHIBIT 8**) and a copy of the relevant statute found at Section 2-15-501, MCA (**EXHIBIT 9**). Ms. Evans directed the EQC to Section 2-15-501(7) which requires the Attorney General to issue the opinion within three months following the date it is requested unless the Attorney General certifies to the requesting party that the question is of sufficient complexity to require additional time. Speaker Matthews has stated he does not recall receiving notice from the Attorney General requesting additional time.

05:23:36 Sen. McGee wondered if the Attorney General followed the law regarding not issuing the opinion. Co-Chairman Harris asked the EQC whether it should remind the Attorney General that the deadline has passed and it is awaiting the opinion. Sen. Story suggested previous correspondence received from Mr. Tweeten explaining vacation schedules and heavy workload would serve as the Attorney General's response. Co-Chairman Harris suggested a letter from the EQC reminding the Attorney General of his statutory obligation would be warranted.

(Tape 4; Side B)

05:24:47 Sen. Shockley suggested the EQC had decided to request the opinion before filing a lawsuit.

05:25:18 Sen. Story suggested the issue is about to become moot since it had to do with the collection of water rights.

05:26:16 Sen. McGee moved the EQC draft a letter reminding the Attorney General of the provisions in statute and request an opinion. The motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.

Public Comment

05:27:29 John Youngberg, Montana Farm Bureau, emphasized the need to complete the adjudication process. Mr. Youngberg thought irrigation districts and ditch companies had fallen through the cracks because their fees were higher than the level set for the proposed \$400 refund and requested the EQC to address the issue.

EXPLANATION OF EQC'S ROLE REGARDING AGENCY LEGISLATIVE PROPOSALS--Mr. Everts

05:29:13 Mr. Everts reviewed EQC's history and purpose in reviewing agency legislation. The EQC's decisions will be to request the drafting and pre-introduction of the agencies' proposed legislation and will not necessarily include EQC's support of the proposed legislation. If the EQC decides not to approve the legislative proposals, agencies can still get a sponsor for their legislative proposals and get the legislation drafted.

REVIEW OF DEQ LEGISLATIVE PROPOSALS

DEQ Review of Legislative Proposals--Director Opper

05:34:56 Richard Opper, Director, Department of Environmental Quality (DEQ), submitted a Summary of Major Provisions of Proposed DEQ Legislation for 2007 ([EXHIBIT 10](#)) and reviewed The DEQ's proposed legislation for the 2007 session ([EXHIBIT 11](#)).

(Tape 5; Side A)

Questions from the EQC

06:13:03 Rep. Dickenson asked about the purpose of the coal and uranium program. Director Opper explained the program is regulatory and that the coal program, in particular, requires significant staff. Rep. Dickenson asked whether The DEQ is anticipating a reduction in federal funding. Director Opper replied he is anticipating a reduction and has, in fact, already seen federal funding go down significantly. Rep. Dickenson wondered what the wisdom would be in putting electrical generating facilities back under the Major Facility Siting Act (MFSA). Director Opper stated it is a question of whether the changes taken place in MFSA pared down the state's ability to regulate environmental laws and statutes or whether it pared down a great piece of environmental legislation.

06:15:57 Sen. Story addressed the proposed tax on coal and wondered what The DEQ's legal staff had to say about the proposed tax in relation to the severance tax. Director Opper replied he had not had an in-depth conversation on the issue.

- 06:16:57 Sen. Lind addressed the proposed Water Quality Act amendment and wondered whether repealing the requirement to adopt rules specifying times and locations for suction dredging would eliminate suction dredging in high-water temperature or low-water temperature periods. Tom Reid, Water Quality Permit Supervisor, DEQ, replied the DEQ's administrative rules require them to rely heavily on FWP for their expertise, and permits are conditioned based on FWP recommendations.
- 06:18:38 Sen. Story addressed the proposed time expansion for the Board of Environmental Review (BER) from 60 to 120 days, and asked whether the time frame had been in statute for awhile. John North, Chief Legal Counsel, DEQ, agreed the 60-day time frame had been in the Administrative Procedures Act for many years. Sen. Story wanted to know whether streamlining done in the Montana Environmental Policy Act (MEPA) had anything to do with the proposal. Mr. North replied no.
- 06:20:07 Co-Chairman Harris requested clarification regarding the infectious waste management proposal and asked if it was related to the federal statute which regulates medical waste. Co-Chairman Harris noted if it is related to the federal statute, it is probably a requirement for all states. Rick Thompson, Waste Section Supervisor, DEQ, did not think there was a relation to the federal statute. Co-Chairman Harris recalled subsection (j) included medical waste. Mr. Thompson did not think that subsection was implemented nationwide. Co-Chairman Harris wondered what the plan was in terms of subdividing the regulatory authority. Mr. Thompson replied the proposal would be to insert language that says "appropriate agency." Infectious waste would be treated as a solid waste and would fall under the DEQ Solid Waste Management Act. Co-Chairman Harris expressed concern about handing rulemaking authority over to the Department of Health and Human Services (DPHHS) where they do not have a lot of experience with waste management. Mr. Thompson explained the DEQ would write the rules dealing with waste.

Public Comment

There was no public comment offered.

EQC Discussion and Action

- 06:26:53 Co-Chairman Harris removed proposals 8, 10, 26, and 27.
- 06:28:10 Sen. Story commented that he does not agree with some of proposals, but he was willing to let the debate occur at a later date.
- 06:29:15 Sen. McGee moved to remove DEQ's proposal 1, Exhibit 11, and depicted the proposal as being one of the last two nails in the coffin for the mining industry. Sen. McGee's motion failed by voice vote with Sen. McGee, Rep. Barrett, Sen. Shockley, and Rep. McNutt voting aye and Mr. Cebull and Rep. Peterson voting aye by proxy.

- 06:33:33 Sen. McGee moved to remove proposal 4 from the DEQ's list of proposed legislation. Sen. McGee's motion failed 7-9 by roll call vote with Mr. Cebull, Rep. McNutt, and Rep. Peterson voting by proxy.
- 06:36:25 Sen. McGee moved to remove proposals 5, 7, 13, 14, 17, 19, and 20 from DEQ's proposed legislation. Sen. McGee's motion failed 6-10 by roll call vote, with Mr. Cebull, Rep. McNutt, and Rep. Peterson voting by proxy.
- 06:42:00 Rep. Barrett referred to her notes from the EQC's initial meeting on May 23-24, 2005, in which DEQ identified its priorities for the interim as efficiency in permitting, promoting DEQ to the public, and completing the studies on TMDLs, coal bed methane, and coal production.
- 06:42:40 Co-Chairman Harris moved the EQC approve all of DEQ's proposals with the exception of proposals 8, 10, 26, and 27. Co-Chairman Harris' motion carried 11-5 by roll call vote, with Mr. Cebull, Rep. McNutt, and Rep. Peterson voting by proxy.
- 06:44:53 Director Opper explained the proposal regarding the Solid Waste Act license fee enforcement, which was added at the last minute to DEQ's proposed legislation. Rep. Dickenson moved the EQC approve the proposed legislation regarding Solid Waste Act license fee enforcement measure. The motion carried by roll call vote with Mr. Cebull, Rep. McNutt, and Rep. Peterson voting by proxy.

(BREAK)

(Tape 5; Side B)

REVIEW OF DNRC LEGISLATIVE PROPOSALS

DNRC Review of Legislative Proposals--Director Sexton

- 06:57:26 Director Sexton reviewed DNRC's legislative proposals (**EXHIBIT 12**). Director Opper noted the proposal regarding cash leasing on state land is no longer being proposed and should be deleted from the list.
- 07:07:29 Sen. McGee requested clarification and Director Sexton clarified the language "no greater than one third of the amount specified in the appropriation" is being replaced with language that would require a change in current law and would state actual rates assessed on each land would be driven by the rate needed to generate one-third of the legislative appropriation.
- 07:08:24 Director Sexton continued reviewing Exhibit 12 and submitted a Five-Year Summary of Gross Revenue Generated by Activity (**EXHIBIT 13**). Director Sexton referred the EQC back to Exhibit 12 and continued reviewing DNRC's proposed legislation.

Questions from the EQC

- 07:31:31 Rep. Barrett referred to DNRC's first proposal and asked whether the working group been in contact with the Bureau of Reclamation. Rep. Barrett noted in her county with the Clark County Dam under the Bureau of Reclamation, augmentation was not allowed. Director Sexton replied DNRC was not aware the Bureau of Reclamation would not allow augmentation and stated she would research the issue further.
- 07:32:51 Sen. Story commented the issues will be presented to the EQC at its next meeting.
- 07:33:23 Sen. Lind noted the time required for drafting legislation and referred to Mr. Everts. Mr. Everts recommended duplication, so the process of drafting legislation could begin.
- 07:34:12 Sen. McGee commented on the first three bills and stated that in individual basins or aquifer systems the total volume, extent, and capabilities of the aquifer system are unknown. Sen. McGee suggested the proposed legislation does not reflect that science.

(Tape 6; Side A)

- 07:36:07 Sen. McGee addressed legislative proposal 5 and asked whether the \$80,000 would be an additional amount and would not reflect the total cost coming from the general fund. Director Sexton explained the \$80,000 is to replace the administrative trusts for Morrill only. Sen. McGee requested that Director Sexton supply the EQC with a total dollar amount and the percentage DNRC would be using for administrative costs. Director Sexton replied DNRC would be capped at no more than 15 percent. Sen. McGee referenced proposal 6 and recalled Director Sexton stating they looked at the Subdivision and Platting Act. Sen. McGee suggested the DNRC's proposal would show up in the county Subdivision and Platting Act requirements and asked Director Sexton if she agreed. Director Sexton explained the proposal will apply to people already living there. Sen. McGee addressed proposal 8, which included a requirement to designate a geo code to a designated parcel. Sen. McGee believed there needed to be a definition in code as to what the geo code is and what the universal digits stand for. Sen. McGee addressed proposal 10 and asked if there would be a difference in standards applied to a lessee on state lands other than what state lands apply to themselves. Director Sexton replied the DNRC does apply weed control to land that is not leased and is trying to improve. Director Sexton believed the state should be held to the same standard. Sen. McGee addressed proposal 11, and wondered why the DNRC was involved. Director Sexton replied the proposal is for the grants and loan programs in the revolving loan fund. Anna Miller, Loan and Financial Management Bureau, DNRC, responded they have a portfolio of approximately \$300 million of loans to local governments.
- 07:43:54 Sen. Story noted he has been appointed to a subcommittee to deal with special district legislation and suggested proposal 11 should be coordinated with Leanne

Kurtz. Sen. Story asked about the difference in sums noted on the front and back of Exhibit 13. Kevin Chapel, Agriculture and Grazing Management Bureau Chief, DNRC, explained the revenues noted on the front of Exhibit 13 are all of DNRC's revenues, including money that is distributed annually. Sen. Story replied the EQC had questions about the calculations. Mr. Chapel explained the difference is there are other sources of revenue that makeup funding for the agency. Sen. Story addressed proposal 4 and wondered how the budget ever got to a point where the fee was not one-third of the budget. Director Sexton replied it was a result of an increase in the appropriation. Sen. Story suggested the DNRC should either raise the fee or get the budget back in line.

07:50:37 Barbara Smith, Legislative Fiscal Division, provided clarification that three packages were added through the appropriation process in the subcommittee and the calculation was not considered at that point. Now that the appropriation is part of the base budget, the calculation does not work.

07:51:12 Sen. Story addressed the proposed carbon sequestration program and asked if that program will add pressure to reduce timber harvest. Director Sexton replied newly planted trees can be utilized. In addition, the DNRC is completing a habitat conservation plan with the U.S. Fish and Wildlife Service (USFWS) which will also set aside land. Director Sexton suggested the carbon sequestration program would provide a way to gain income from those lands being set aside. Director Sexton did not believe the program would impact the sustained yield. Sen. Story addressed proposal 13 and recalled when the Legislature raised the amount to \$3 million and wondered if the cap would limit the number of people who have access to the program. Ray Beck, Administrator, Conservation and Resource Development Division, DNRC, replied they have bonding authority up to \$30 million, and have loaned out approximately \$17 million. Mr. Beck did not feel the sunset would keep people from applying.

07:54:34 Rep. Dickenson addressed carbon sequestration and asked Director Sexton whether she thinks federal action is needed for the program to be profitable and create economic development. Director Sexton believed private entities, as well as federal support, would increase the benefit and enhance the process.

Public Comment

No public comment was offered.

EQC Discussion and Action

07:56:35 Rep. Barrett stated she would like to remove item No. 10 and believed the bill is unjust to lessees. Rep. Barrett believed the contract contains provisions for livestock, fences, and water. Currently, hunters, sportsman, and recreationalists can use the land and now there is a weed issue. Rep. Barrett stated when other people use the land, lessees have no control. Rep. Barrett moved to remove item No. 10 from DNRC's list of proposed legislation. Director Sexton pointed out there is a \$2 conservation license and 10 percent of the fee goes toward weed control. Rep. Barrett did not believe the amount was sufficient.

- 07:59:31 Mr. Mattelin asked whether lessees could access the money. Director Sexton replied the funds are available to lessees. Rep. Barrett's motion failed 8-8 by roll call vote with Mr. Cebull, Rep. McNutt, and Rep. Peterson voting by proxy.
- 08:01:23 Co-Chairman Harris moved to have DNRC's list of proposed legislation approved for drafting.
- 08:01:50 Sen. Story wondered how many of DNRC's bills were already drafted. Ms. Evans suggested five or six fire bills, the account combo bill, the Morrill Act bill, and the contract timber bill were all drafted at the request of the Study Subcommittee.
- 08:03:10 Co-Chairman Harris' motion carried 15-1 by roll call vote with Mr. Cebull, Rep. McNutt, and Rep. Peterson voting by proxy.

AGENCY OVERSIGHT ISSUES

Wolf Management Issues

- 08:04:53 Rep. Barrett submitted an e-mail from Jeff Hagener, Director, FWP, to his staff ([EXHIBIT 14](#)) and three maps depicting FWP Wildlife Management Areas ([EXHIBIT 15](#)), FWP Conservation Easements ([EXHIBIT 16](#)) and FWP Wildlife Protection Areas ([EXHIBIT 17](#)). Rep. Barrett explained that Montana is currently operating under a Memorandum of Understanding (MOU) between the USFWS and FWP. However, FWP has now adopted a new policy, and the policy is a deviation from everything FWP had previously told the EQC. Rep. Barrett believed that when wolves and elk come out of the park into Madison County, it becomes a Montana issue. Rep. Barrett requested the EQC to travel to Madison County in August to hear citizen concerns and stressed the need to listen to the public. Rep. Barrett moved the EQC travel to Madison County in August to hear citizen concerns and clarified she would prefer the full EQC attend the meeting.
- 08:11:17 Sen. Wheat commented that he understands the concern, but thought the issue would be more manageable if a hearing were held just in front of the Agency Oversight Subcommittee. Rep. Barrett amended her motion for the hearing to be conducted by the Agency Oversight Subcommittee and asked if anyone else on the EQC would be willing to attend. Sen. Shockley and Sen. McGee stated they would be willing to attend.
- 08:12:59 Co-Chairman Harris confirmed to Sen. Story that any other EQC member who attended the meeting would be eligible to receive reimbursement for their expenses.
- 08:13:10 Rep. Barrett suggested dates for the meeting should be coordinated with Director Hagener's availability.
- 08:14:19 Sen. Larson asked exactly what the Agency Oversight Subcommittee could do and what kind of recommendations it could make. Rep. Barrett replied she would like to know what FWP is doing since it said Montana would be better off when FWP took the lead. Rep. Barrett believed FWP should comply with the MOU and

state law and suggested there were problems with the agency. Rep. Barrett was seeking to find out exactly what is driving wolf management in Montana.

08:16:34 Sen. Shockley thought it was important to gather the facts and hear the citizen side of the story.

Public Comment

08:16:59 Rep. Rice testified in the past whenever ranchers had a problem with wolves they could call the federal trappers with USFWS. Now, anytime someone calls the federal trapper, he states he does not have jurisdiction and ranchers should call FWP. SB 461 stated if packs were in the vicinity of livestock or people they were to be collared; however, no wolves have been collared.

(Tape 6; Side B)

Rep. Rice depicted the issue as serious because wolves are becoming acclimated to people.

08:21:10 Co-Chairman Harris asked what further action Rep. Rice expected the EQC to take. Rep. Rice identified the issue as FWP not following the law.

08:22:32 Jay Bodner, Montana Stock Grower's Association, expressed concern about the FWP's decision to remove USFWS from taking lethal control action on the wildlife management areas and how those areas have become a sanctuary for wolves. the FWP has indicated it will initiate ground-trapping techniques, but those efforts often take too long and fail. USFWS is the agency trained for wolf management. Mr. Bodner suggested the change in direction to FWP has not been a favorable change.

EQC Discussion and Action (if any)

08:26:12 Sen. McGee asked whether the subject lands were private or public. Rep. Barrett replied they are FWP's wildlife management areas.

08:26:43 Sen. Lind asked for clarification on the wolf numbers, and Rep Rice replied there are 1,034 wolves in the tri-state area.

08:27:45 Rep. Dickenson addressed Rep. Rice's statement there were no packs collared in her area, but recalled hearing there were two or three packs collared. Rep. Rice clarified no packs in her area were collared since the passage of SB 461. Rep. Barrett's motion to have the Agency Oversight Subcommittee, and any other interested EQC members, travel to Madison County in August to hear citizen concerns about wolf issues carried 13-3 by roll call vote with Mr. Cebull, Rep. McNutt, Rep. Peterson, and Sen. Shockley voting by proxy.

OTHER BUSINESS

There was no further business to come before the EQC.

INSTRUCTIONS TO STAFF

- 08:31:24 Ms. Evans asked how the letter to the congressional delegation regarding the pending Crow and Fort Belknap Tribes should be done. Co-Chairman Harris suggested Ms. Evans and Ms. Cottingham should draft a letter for review and approval by himself and Rep. Barrett as Co-Chairmen of the EQC.
- 08:32:04 Sen. Lind moved that Ms. Evans and Ms. Cottingham should draft a letter to the congressional delegation regarding the pending Crow and Fort Belknap tribes and that the EQC Co-Chairmen have the authority to review and approve the letter.
- 08:32:25 Sen. Story expressed his concerns and stated it is a big step to approach Washington and expect to be successful. Sen. Story wondered what would happen if the attempt failed. Sen. Story agreed the letter would be a good indication to the congressional delegation.
- 08:33:27 Co-Chairman Harris addressed Sen. Story's concern and explained it is extremely normal for a state to contact its congressional delegation and ask for focus on legislation. Co-Chairman Harris was certain the Secretary of the Interior would not be offended by the request.
- 08:34:25 Sen. Wheat restated his understanding of the legislation was to appropriate funds so compact agreements could be implemented. Sen. Wheat urged the letter should be carefully written as to not offend and suggested the letter should provide background information and emphasize the amount of time that has been spent on the compacts.
- 08:35:16 Sen. McGee agreed with Sen. Wheat and thought a statement in the letter could allude to EQC's confidence in Secretary Kempthorne and his familiarity with the issues. Sen. McGee would like to see a copy of the letter sent to Secretary Kempthorne. Co-Chairman Harris agreed that would be appropriate. Sen. Lind's motion carried unanimously by voice vote with Mr. Cebull, Rep. McNutt, and Rep. Peterson voting by proxy.
- 08:37:30 Rep. Dickenson requested that all EQC members be informed of the date for the meeting in Madison County.
- 08:38:19 The EQC will hold its final meeting in Helena on September 11-12, 2006.

ADJOURN

- 08:38:37 Meeting adjourned at 4:45 p.m.