



# ENVIRONMENTAL QUALITY COUNCIL

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

## STUDY SUBCOMMITTEE MINUTES

Thursday, May 18, 2006  
State Capitol, Room 137

Please Note: These are outlined minutes with audio recording. These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities.

### **COMMITTEE MEMBERS PRESENT**

SEN. ROBERT STORY

REP. WALTER MCNUTT, CHAIR  
REP. SUE DICKENSON, VICE CHAIR

MR. BUZZ MATTELIN

### **ABSENT**

SEN. GREG LIND

### **STAFF PRESENT**

KRISTA LEE EVANS, Research Analyst  
LEANNE KURTZ, Research Analyst  
DIANE MCDUFFIE, Secretary

### **ATTACHMENTS**

[Agenda #1](#)  
[Roll Call #2](#)  
[Visitor's List #3](#)

### **COMMITTEE ACTION**

- ▶ Referred the wildland-urban interface to the Education and Local Government committee.
- ▶ Referred the laws regarding fire chiefs authority to the Education and Local Government committee.
- ▶ Moved to send LC 7777 out for public comment
- ▶ Moved to send LC 8989 for public comment

- ▶ Moved to send the draft legislation on the timber harvest program out for public comment

### **CALL TO ORDER AND ROLL CALL**

**Chairman McNutt** called the meeting of the Environmental Quality Council Study Subcommittee to order at 9:00 a.m. on Thursday, May 18, 2006. Secretary noted the roll. (**Attachment #2**)

### **ADMINISTRATIVE MATTERS**

**Representative Dickenson** noted on several pages her name was misspelled. **MOTION: Senator Story** moved the minutes of the March 16, 2006 meeting be approved with the correction noted above. **VOTE:** Motion carried unanimously.

*(Tape 1; Side A)*

### **HJR 10 FIRE STUDY**

Leanne Kurtz, LSD introduced Mark Phares, Attorney, DNRC; Ted Mead, Fire & Aviation Bureau Chief, DNRC; Brett Waters, Belgrade Fire; and Brian Crandell, Assistant Fire Chief, Central Valley Fire. Ms. Kurtz requested on behalf of the work group that the Study Subcommittee refer Wildland Urban Interface and authority of fire chiefs under Title 7, chapter 33 to the Local Government subcommittee of the Education and Local Government interim committee.

Ms. Kurtz provided the following proposed bill draft changes to fire statutes:

#### LC 2000 (**Exhibit 1**)

- Requires municipalities and governmental fire agencies to adopt the same fire codes as adopted by the Department of Justice.
- Changes the penalty for setting or leaving a fire that causes damage.
- Clarifies that the liability of a person who starts a fire includes costs associated with investigation of the fire and with administration of fire suppression.
- Requires fire incident reports to be filed with the Department of Justice.

Mr. Mattelin asked for clarification regarding dissemination of confidential information to the chief of police.

Ms. Kurtz said this change was at the request of the state fire Marshall in the interest of making sure it went to one person rather than a fire service agency.

Mr. Mattelin asked which fire code has been adopted by the Department.

Mr. Waters said the fire code currently adopted by the State of Montana is the national fire protection NAPA/U.C. The fire codes are changed every 2 to 3 years through administrative rule.

**Chairman McNutt** asked Mr. Waters to explain the process on adoption of fire codes.

Mr. Waters said when there is a new fire code that is available it is reviewed by the State Fire Marshall and the Fire Marshall's Advisory Board. Numerous meetings are typically scheduled

around the State and all of the code practitioners provide an analysis of the code. When the review an analysis is complete a recommendation is made and moves through the administrative rules process.

LC 2001 ([Exhibit 2](#))

- Codifies authority and allows DNRC to require those in high fire hazard areas to cease operations.
- Language prohibits entry onto areas that have been closed.
- Gives county commissioners the same authority as is given to DNRC.
- Clarifies how the Governor may close land to access and clarifies the same for county commissioners.
- Closure authority is clear and cross-referenced and the authority of the DWP is retained to restrict hunting and fishing in an area if requested by county commissioners.

Mr. Mead commented that the process to restrict activities and if need be to close areas has been beneficial to decrease the number of person caused fires in situations where there is extreme fire danger. Because of the different authorities between Federal, State and County it has been very challenging to get coordination of restrictions.

**Rep. Dickenson** asked for an example of fire prevention and suppression measures that a county might need to impose.

Mr. Mead said to restrict open camp fires.

**Senator Story** asked what other land that would not be under the jurisdiction of a municipality or a state or federal agency.

Mr. Mead said that perhaps county park lands.

LC 2002 ([Exhibit 3](#))

- Reorganizes Title 76, chapters 11 and 13.
- Where appropriate, generalizes references to forest.
- Clarifies fire protection responsibilities among jurisdictions.
- The proposed state fire policy appears in LC 2002, to be codified in Title 76, chapter 13.

Ms. Kurtz provided proposed changes from Debra Parker Foley, Forest Owners Association, regarding development of fire protection guidelines and the W.I. definition. ([Exhibit 3a](#))

**Chairman McNutt** said the bill would be sent out for public comment as is and public comments will be considered at the July meeting.

***(Tape 1; Side B)***

**Senator Story** expressed concerning regarding rulemaking in the department in section 5 of the bill.

Ms. Kurtz explained that the Department of Natural Resources is not being given any more rule making authority. The new language is consolidating existing rule making authority throughout Title 7, chapter 13.

Mr. Phares said the department has the authority to adopt rules under the rule making statute but there would need to be a separate statute that would provide the department implementing authority.

#### LC 2003 ([Exhibit 4](#))

- Proposes changing "freeholder" to "registered voter" who resides in the area that is the subject of the petition.
- Proposes allowing cities and towns to be included in rural fire districts, but only if the city or town council agrees.
- Contains updated language governing fire district trustees.
- Includes cross-references to Title 76 and applies consistent use of concepts and terminology with appropriate provisions of Title 76. It also attempts to clarify county fire protection responsibility.

Ms. Kurtz explained that some members of the workgroup were not agreeable to the "freeholder" change and the percentage required. The group proposed changing the percentage required to 20 percent.

Mr. Waters commented that one of the concerns with 20 percent is that the potential minority could dictate the service delivery of the majority.

After an extensive discussion, Ms. Kurtz proposed changing the percentage required to 40 percent before the bill goes out for public comment, if the committee decides to adopt the bill.

There was no objection from the committee.

#### LC 2004 ([Exhibit 5](#))

- Includes governing bodies of political subdivision in other states to be among the entities with which Montana may enter into mutual aid arguments.
- Requires the Governor to designate political subdivisions as officials authorized to request and receive mutual aid assistance.

Mr. Crandell, Assistance Fire Chief, Central Valley Fire District testified that LC 2004 seeks authority for Montana response agencies to make direct arrangements for help from response agencies in other states and make those arrangements before the emergency strikes. Currently, no such authority exists. Local response agencies within Montana have the authority to make direct arrangements for immediate response between agencies within Montana. With the benefit of that authority, local response agencies across Montana have built a well used, refined, costs effective, state wide mutual aid network.

**Senator Story** asked if our laws would exempt firefighters from liability under a mutual aid agreement.

Mr. Crandell said this bill proposal primarily modifies the existing Montana mutual aid statutes that include protection from liability.

**Chairman McNutt** suggested the work group research the issue of liability regarding crossing state lines.

LC 2005 (**Exhibit 6**)

- Exempts DNRC fire suppression activities from MEPA review.

Ted Mead explained that the department does not currently and has not in the past formally gone through a MEPA review process for any fire suppression activities. This bill would clearly state those activities are exempt. Mr. Mead said that the chemicals used to fight fires goes through an environmental protection review.

For a more detailed explanation of the proposed bill drafts see Ms. Kurtz's report "House Joint Resolution No. 10 Study of Wildland Fire Policy and Statutes dated May 3, 2006. (**Exhibit 7**)

**(Tape 2; Side A)**

#### **Report on wildland-urban interface meeting**

Ms. Kurtz said the workgroup met with representatives of the building codes division to discuss conflicting authority for regulating building and development in the wildland-urban interface. The group will be meeting again June 2 and would like to take recommendations from that meeting to the Local Government subcommittee.

**MOTION: Rep. Dickenson** moved to refer the wildland-urban interface to the Education and Local Government committee. **VOTE:** Motion passed.

**MOTION: Rep. Dickenson** moved to refer the laws regarding authority of fire chiefs to the Education and Local Government committee. **VOTE:** Motion passed.

#### **Trust Lands Administration - Alt. Funding**

Krista Evans, LSD provided a detailed explanation of LC 7777, DNRC's proposal to put all administrative money into the Trust Land Administration Account (TAC) (**Exhibit 8**) and a flow chart prepared by the DNRC that shows how the money moves through the process. (Exhibit 8a) At the last meeting the study subcommittee requested that the bill be sent out for wider distribution. No written comments have been received.

**Rep. Dickenson** asked what is STIP.

Ms. Evans said short term investment.

**Rep. Shockley** asked if we know how much it would cost to track attributable costs from each trust.

Ms. Evans said they do not know. DNRC has raised this issue and how much detail is reasonable considering the costs associated.

**Rep. Shockley** suggested paying all the costs from the general fund and withhold that amount from their general fund appropriation.

Tom Schultz, Administrator, DNRC said the department would not expect to spend anymore dollars for FTE. The department does track revenues and costs currently by trust.

**Senator Story** asked for clarification of the Trust Land funding proposal flow chart. ([Exhibit 8a](#))

Mr. Schultz explained the chart shows how the money currently flows through the process. When the money comes in it is earmarked whether it is distributable or non-distributable and tied to a trust. Currently non-distributable money is invested in short term investments (STIP) and money can be taken from that account to fund the TAC account. At fiscal year end, the money in the STIP is put into the permanent fund. The department is proposing adding a distributable revenue stream to the TAC account. Distributable revenue is also invested in short term investments and three times a year money is distributed to common schools. TAC is funded out of a percentage of the distributable and non-distributable revenue. The 15 percent is to be viewed as a formula, not 15 percent of every check that comes to DNRC.

**Rep. Harris** asked what are the administrative costs.

Mr. Schultz said employees in the Forest Management program, Agriculture and Grazing program, special uses and administrative staff. Approximately 60 percent of the FTE are in the Forest Management program.

**Rep. Dickenson** asked if the other trusts administrative costs could be figured on the history of total administration costs less \$40,000 for the Morrill trust.

Mr. Schultz said in 2005 the amount was \$9.5 million. He estimated over the next 3 to 4 years, \$9.5 to \$10.5 million in terms of total expenses for all the trusts.

**(Tape 2; Side B)**

Mr. Mattelin asked if the amount spent on weed control management changes by putting all the money in the TAC account.

Mr. Schultz said recreational use regarding weed control is very limited. It refers to just using those monies to deal with weeds that were spread as a result of recreational use. In FY 05 the department spent between \$20,000 to \$25,000 of recreational use money and another \$40,000

to \$50,000 on other weed issues. The department will allocate roughly the same amount of money unless additional appropriation authority is granted by the legislature.

### **Public Comment**

Senator Bob Hawks expressed concern regarding inadequate reporting data regarding revenues and expenses of individual trust land accounts under the management of DRNC. Sen. Hawks forwarded a request that EQC consider drafting legislation that would consolidate some of the trusts by use and establish the accounting transparency needed to meaningful legislative oversight. ([Exhibit 9](#))

Sheila Stearns, Commissioner of Higher Education thanked the study subcommittee for taking on the task of reviewing the issues related to the administrative assessments from Montana trust lands. Ms. Stearns urged the committee to consider discontinuance of all diversions from all land trusts for administrative costs and pointed out the need for repayment of the Morrill Act land grant for revenues. ([Exhibit 10](#))

**Senator Story** asked Mr. Schultz if some trusts are subsidizing others.

Mr. Schultz said they have used some of the common school revenues to fund Morrill and some of the other trusts. But overall the programs are stand-alone in terms of ability to make revenue and the trusts over the long-term balance out.

**MOTION: Senator Story** moved to send LC 7777 out for public comment. **VOTE:** Motion passed.

### **Morrill Act Bill Draft**

Krista Evans, LSD, provided a detailed explanation of LC 8989 ([Exhibit 11](#)), which exempts the ability to use revenues from Morrill Act land for administrative purposes and includes a biennial appropriation for \$80,000. DNRC has since advised that they would prefer to not have a statutory appropriation and would rather have a HB 2 line item appropriation.

Tom Schultz, DNRC explained that there will be years that having an \$80,000 appropriation will be insufficient to manage a timber sale on Morrill grant lands and this could put individual timber sales at debate before the legislative subcommittee.

**Senator Story** asked if the line item appropriation an ongoing appropriation.

Barbara Smith, Legislative Fiscal Division, explained that what DNRC is asking for is a language appropriation that is written into the bottom of HB 2. It would have a number and a contingency of when it can be spent and the department would have to come before each session to get the appropriation. Ms. Smith said if the committee would like to look at sending Morrill through HB 2 her suggestion would be in a line item restricted one-time-only appropriation.

**MOTION: Senator Story** moved to send LC 8989 for public comment as is. **VOTE:** Motion passed.

### **SURFACE WATER/GROUND WATER UPDATE**

Mike McLane, Planner, Water Resources Division, DNRC provided an update on the surface water/ground water work group and proposed statutory changes. ([Exhibit 12](#)) The work group proposed a new definition for Augmentation Plan and also recommended applying 85-2-337 to all basin closures with some modification to the language in subsection 2.

The work group plans to meet again May 31 and it may be as late as September before legislation can be drafted.

### ***(Tape 3; Side A)***

Tim Hall, Chief Legal Counsel, DNRC explained the Trout Unlimited (TU) case ([Exhibit 13](#)) and discussed the recommendations for draft legislation provided in the handout. ([Exhibit 14](#))

**Chairman McNutt** said that due to time constraints and the public comment period, EQC would not be able to sponsor a bill.

Mr. Hall said DNRC has submitted a draft concept to the Governor's office as part of DNRC's proposed legislation.

**Chairman McNutt** asked the work group to provide an update at the July meeting.

### **Public Comment**

John Youngberg, Montana Farm Bureau representative said they are on the right track and should have a recommendation after September.

### **ST. MARY'S CANAL PROJECT UPDATE** (Tape 3A-690)

John Tubbs, DNRC provided an update on the St. Mary Diversion Works Rehabilitation Project ([Exhibit 15](#)) and a summary of the State and Local Cost Share ([Exhibit 15a](#)). Mr. Tubbs said that draft legislation is being developed in Senator Burns' Office and that DNRC is working on combining provisions from the bill submitted by the state, the working group and the Bureau of Reclamation. Senator Baucus is prepared to co-sponsor the legislation in the Senate and his staff is fully briefed on the legislation.

### **CONTRACT TIMBER HARVEST WORK GROUP UPDATE**

Krista Evans, LSD, discussed the Draft White Paper for HJR 33 ( [Exhibit 16](#)) and attached bill draft. At the last meeting the committee requested that the proposal be put into draft legislation.



**Rep. Dickenson** asked why is the sustained yield 53.2 MMbf when the annual statewide harvest is approximately 700 MMbf.

Mr. Schultz said the 700 MMbf is all ownerships.

Mr. Mattelin asked how much would administrative costs increase.

Mr. Schultz said the administrative costs would go up but on average 10 to 12 percent more net revenue would be generated.

Mr. Mattelin asked how this would effect affect the balance of allocating costs to individual trusts.

Mr. Schultz said it would not have any affect. He referred to New Section 5. Creation of Contract Harvesting Revolving Account on page 6 of the bill draft. This account would be a sub account of the forest improvement account to deposit gross revenues to pay for expenditures associated with contract harvesting sales. The net proceeds from the sale of the forest products must be distributed to the appropriate trust beneficiary,

Section 8 on page 10 refers to the existing forest improvement account which would be amended to recognize the new program.

**Motion: Rep. Dickenson** moved to send the draft legislation on timber harvest program out for public comment. **VOTE:** Motion passed.

***(Tape 3; Side B)***

### **PUBLIC COMMENT**

Jason Todhunter, Montana Logging Association testified in support of DNRC's proposal to pursue legislative authority allowing DNRC to directly contract certain projects. They believe such legislation will provide an invaluable tool for the DNRC to be stewards of the State's forest land and to maximize revenue for our schools. ([Exhibit 17](#))

### **"DISCUSSION ON DRAFT FINDINGS/RECOMMENDATIONS AND DRAFT REPORT**

Krista Evans, LSD, presented the members comments on draft Findings and Recommendations. ([Exhibit 18](#)) The purpose of this item is to gather findings and recommendations for each of the primary topics from the work plan and to prepare the subcommittee's draft report. The following changes were proposed by the committee.

HJR 33 Study contract timber harvesting

FINDINGS:

Change bullet item 3; "but carries additional risk to the trusts" to "may carry".

RECOMMENDATIONS:

Change bullet item 2; "No more than 10% of total harvest" to "No more than 10% of the annual sustainable yield".

HJR 10 Study fire related statutes for suppression and mitigation

FINDINGS: No changes

RECOMMENDATIONS:

Change bullet item 4 to include reasoning for referring the wildland-urban interface and the laws regarding fire chiefs authority to the Education and Local Government committee.

Water Policy and Member Defined Issues

FINDINGS:

Delete "and efficient" in bullet 1.

Add "in the TMDL development process" to bullet 4.

Add "and the clean water act" to bullet 6

RECOMMENDATIONS:

Add recommendation regarding domestic wells.

Wading into Montana Water Rights revision

FINDINGS:

Change "is a" to "are" in bullet 1.

RECOMMENDATIONS:

Add "new" in bullet 1.

Surface water/ground water interaction

No changes

Domestic well exemption for the filing of a water right

No changes

Water adjudication chronology

No changes

St. Mary's Canal Project

Add "Milk River" to title

Add "The St. Mary's Diversion provides up to 70% of the flow of the Milk River in dry years" to bullet 1.

DNRC Funding to Administer State Trust Lands

No changes

**PUBLIC COMMENT**

None

**OTHER BUSINESS**

None

**INSTRUCTIONS TO STAFF**

Ms. Evans said she will update the report to reflect proposed changes and comments.

**ADJOURN**

Meeting adjourned 3:00 p.m.