



# ENVIRONMENTAL QUALITY COUNCIL

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**GOVERNOR STEVE BULLOCK**  
**DESIGNATED REPRESENTATIVE**  
TIM BAKER

**HOUSE MEMBERS**  
BILL MCCHESENEY--Vice  
JERRY BENNETT  
VIRGINIA COURT  
ED LIESER  
JEFFREY WELBORN  
KERRY WHITE

**SENATE MEMBERS**  
JOHN BRENDEN--Chair  
JENNIFER FIELDER  
BRADLEY MAXON HAMLETT  
JIM KEANE  
RICK RIPLEY  
GENE VUCKOVICH

**PUBLIC MEMBERS**  
SCOTT ASPENLIEDER  
DEXTER BUSBY  
MARY FITZPATRICK  
ROY MORRIS

**COUNCIL STAFF**  
JASON MOHR, Research Analyst  
SONJA NOWAKOWSKI, Research Analyst  
HOPE STOCKWELL, Research Analyst  
HELEN THIGPEN, Staff Attorney  
NADINE SPENCER, Secretary  
JOE KOLMAN, Legislative Environmental Analyst

## MINUTES LOG

March 20, 2014

Room 317, State Capitol Building  
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select *Committees*, then *Interim*. Once on the page for *Interim Committees*, scroll down to the appropriate committee. The written minutes summary, along with the audio and video recordings, are listed by meeting date on the interim committee's web page.

Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

### **COMMITTEE MEMBERS PRESENT**

SEN. JOHN BRENDEN, Chair  
REP. BILL MCCHESENEY, Vice Chair

SEN. JENNIFER FIELDER  
SEN. BRADLEY MAXON HAMLETT  
SEN. JIM KEANE  
SEN. RICK RIPLEY

REP. JERRY BENNETT  
REP. VIRGINIA COURT  
REP. ED LIESER  
REP. JEFFREY WELBORN  
REP. KERRY WHITE

MR. SCOTT ASPENLIEDER  
MR. DEXTER BUSBY  
MS. MARY FITZPATRICK  
MR. ROY MORRIS

**COMMITTEE MEMBERS EXCUSED**

SEN. GENE VUCKOVICH

**STAFF PRESENT**

JOE KOLMAN, Legislative Environmental Analyst  
SONJA NOWAKOWSKI, Research Analyst  
HOPE STOCKWELL, Research Analyst  
HELEN THIGPEN, Staff Attorney  
NADINE SPENCER, Secretary

**AGENDA & VISITORS' LIST**

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

**COMMITTEE ACTION**

None

**CALL TO ORDER AND ROLL CALL**

- 00:00:01 Sen. Brenden called the meeting to order at 8:17 a.m. The secretary called the roll, [Attachment 3](#).
- 00:01:33 Sen. Keane said that he was contacted by Mike Murray, County Commissioner, Lewis and Clark County, speaking on behalf of Harold Blattie, Executive Director, Montana Association of Counties (MACo). Mr. Blattie said that it may be possible for MACo to do a Memorandum of Understanding (MOU) with the federal government to help smaller counties have a better working relationship with federal land managers within their jurisdiction.
- 00:02:27 Sen. Brenden gave the Council a list of landowners that have easements for public access and who are also getting paid under the Block Management Program, [Exhibit 1](#).

**AGENDA**

**ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE UPDATE**

- 00:03:15 Sonja Nowakowski, Research Analyst, Legislative Services Division (LSD), said that the Energy and Telecommunications Interim Committee (ETIC), will be meeting tomorrow, March 21, and gave an overview of its agenda.

00:04:47 Sen. Hamlett entered the meeting.

### **STATE WATER PLAN UPDATE**

00:08:11 Tim Davis, Administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC), gave an update on the state water planning process and provided a flowchart showing the water planning process, [Exhibit 2](#).

**Public comment** None

**Committee questions and discussion** None

### **DANA RANCH & X HANGING DIAMOND PROPOSED LAND EXCHANGE**

00:10:18 Shawn Thomas, Administrator, Trust Land Management Division, (DNRC), gave a presentation on the proposed land exchange between the Dana Ranch and the DNRC. He provided a copy of the timeline for negotiations from January 2013 to March 2014 and a copy of the Montana Board of Land Commissioners Land Exchange Policy, [Exhibit 3](#).

**Public comment** None

**Committee questions and discussion**

00:14:22 Sen. Keane asked about the criteria for a land exchange. Mr. Thomas explained the criteria.

00:16:13 Sen. Hamlett gave a history of the Dana Ranch and asked if access is a primary consideration for a land exchange. Mr. Thomas said that there are seven criteria that the DNRC uses when considering a land exchange and that they are all equally important.

00:25:42 Sen. Hamlett asked if it is unusual to speed up the timeline for a land exchange. Mr. Thomas said that it is unusual and in the case of the Dana Ranch land exchange it was because of the bankruptcy proceeding.

00:26:43 Sen. Hamlett asked Mr. Thomas to come back to a future EQC meeting and provide more information on how the land exchange process works.

00:28:08 Sen. Brenden said that it is a subjective process.

### **FWP FOREST MANAGEMENT PROGRAM UPDATE**

00:28:53 Ken McDonald, Administrator, Wildlife Division, Department of Fish, Wildlife and Parks (FWP), gave a presentation on forest management planning, [Exhibit 4](#), and the sustainable yield study that FWP recently completed, [Exhibit 5](#).

00:55:04 Bob Harrington, Administrator, Forestry Division, DNRC, complimented the work that has been done by FWP on its forest management program and said that DNRC recently met with FWP to talk about options going forward.

#### **Public comment**

00:58:50 Nick Gevock, Conservation Director, Montana Wildlife Federation (MWF)

00:59:50 Rep. Mike Cuffe, HD 2

#### **Committee questions and discussion**

01:01:37 Rep. Lieser referenced the constraints that Mr. McDonald mentioned for habitat variables and asked if there are other examples of late successional kinds of reserves.

01:03:36 Rep. Lieser asked if consideration is given to other late successional species. Mr. McDonald said that a biologist identifies the management objectives and constraints for each wildlife management area on a case by case basis.

01:04:29 Rep. Lieser asked if there is a database for management activity on FWP lands. Mr. McDonald said that as part of the contract FWP requested a database of all the different management activities on the wildlife management areas.

01:05:29 Rep. Lieser asked how FWP monitors activity. Mr. McDonald said that the majority of the wildlife management areas are for big game. He said that FWP has a plant ecologist on staff who has monitoring stations scattered across most of FWP's wildlife management areas looking at range conditions.

01:06:24 Rep. Lieser asked about the percentage of timber preparation work that is done by DNRC versus the percentage of work that is done by contractors. Rick Nothrup, Habitat Section Supervisor, Wildlife Habitat Bureau, FWP, said that approximately one-fourth to one-third of the work is done by DNRC. Rep. Lieser asked if that will change. Mr. Northup said that FWP and DNRC are working on an MOU to look at ways to streamline the processes.

01:08:06 Mr. Aspenlieder asked how FWP decides whether it is economically feasible to access an area to harvest timber. Mr. McDonald said that FWP staff use professional judgement and common sense, but also work with knowledgeable contractors.

01:09:32 Mr. Aspenlieder said that he is concerned that agencies are in the habit of determining what is economically feasible when private industry is probably better qualified to make those decision.

- 01:10:36 Sen. Keane commented about the timber sale at Mt. Haggin and asked Mr. Gevock if he has toured the site. Mr. Gevock said that he saw the area when the project was proposed and said that he is willing to go out and see how the project has progressed.
- 01:13:12 Sen. Keane said that part of harvesting timber is managing wildlife habitat and asked for support from wildlife groups. Mr. Gevock said that they are willing to help and favor active forest management.
- 01:13:33 Sen. Keane asked if other biologists have toured the site to see the value of legislation that was passed and what FWP is doing at Mt. Haggin. Mr. McDonald said the wildlife division will meet in May and look at timber management areas on Mt. Haggin and at wildlife management areas around Mt. Haggin.
- 01:15:23 Sen. Fielder asked how the designation for habitat value changes as the forest understory grows. Mr. McDonald said FWP is required by statute to revisit the sustainable yield analysis every five years.
- 01:16:46 Sen. Fielder asked about habitat for lynx and snowshoe hare in the dense understory that grows in an area after it has been clear cut. Mr. McDonald said that lynx look for lower level branches, so lack of trees is not good habitat, but that they do need some understory when the snow is deep.
- 01:17:38 Sen. Fielder asked how much state forest land is inaccessible because it is surrounded by federal land. Mr. McDonald said that he will provide the data to the Council, but he did not think it was a lot of land.
- 01:18:34 Rep. McChesney asked what the cost will be to do the analysis every five years. Mr. McDonald said that he doesn't have the exact cost, but that it should be a fraction of the cost for the initial study.
- 01:19:59 Rep. McChesney asked if the initial study incorporated all FWP lands that are applicable. Mr. McDonald said that the plots covered all of FWP's land.
- 01:20:26 Rep. McChesney asked if the requirement that an analysis be conducted every five years is reasonable based on the average growth of timber lands in Montana and if an analysis could be done every 10-15 years and still be as effective. Mr. Harrington said that since the program is new they will wait to make any recommendations until after the first evaluation is done in five years.
- 01:21:58 Rep. White asked how contractors are selected for forestry projects and if local contractors are given preference. Mr. McDonald said that FWP follows the state procurement rules and he said that he did not think that preference was given to local contractors.

- 01:24:59 Sen. Brenden asked if Montanans are given preference for state projects. Helen Thigpen, Staff Attorney, LSD, said that state law requires that contracts cannot be awarded with regards to residency but that a preference can be awarded as long as the preference is also provided in that person's state or county where they live.
- 01:26:06 Sen. Ripley congratulated FWP on the successful program.
- 01:26:53 Sen. Keane asked about the remaining \$90,000 of the \$615,000 that was put into the budget. Mr. McDonald said that \$612,500 was appropriated and that \$522,000 was used for the report. He said that part of the \$51,500 that is outstanding is being used to work on a geodatabase and the rest will revert back into the general license account. Sen. Keane requested that Mr. McDonald let the Council know the amount of money that goes back into the license account.
- 01:28:38 Sen. Brenden asked who put constraints on the steep upper slopes on Mt. Haggin. Mr. McDonald said that they were items identified by FWP, working with a contractor, in terms of what would ultimately be used to calculate the sustainable yield value.
- 01:29:33 Sen. Brenden asked what the policy will be if there is a beetle infestation in that area of Mt. Haggin. Mr. McDonald said it will depend on the impact to the wildlife and to the local area.
- 01:30:04 Sen. Brenden commented on areas that were logged in the past and said that sometimes good logging methods can make good habitat.

#### **FWP BLOCK MANAGEMENT PROGRAM UPDATE**

- 01:31:23 Jeff Hagener, Director, FWP, gave an update on the Block Management Program (BMP) and discussed some of the issues and recommendations from the audit report.
- 01:43:34 Sen. Brenden commented on adaptive management and FWP's administrative costs.
- 01:46:41 Ed Grady, rancher, Canyon Creek, Montana, commented on the BMP and conservation easements, [Exhibit 6](#).

#### **Public comment**

- 01:52:40 John Baucus, Sieben Ranch
- 02:01:45 Mr. Baker entered the meeting.
- 02:02:03 Sen. Brenden said that as a landowner, a person has a right to do what they want with their land and commented on the results from the BMP audit.

- 02:02:53 Nick Gevock, MWF
- 02:03:51 Sen. Brenden commented on the attempt that was made during the legislative session to increase pay for game wardens.
- 02:04:10 Jerry Davis, representing himself

### **Committee questions and discussion**

- 02:06:52 Rep. White asked about the inequity of payments that the audit report shows were made to Sieben Ranch and Grady Ranch from 2001-20012 under the BMP. Mr. Hagener said that for several years Sieben Ranch only wanted the services provided by FWP, but not the payment.
- 02:08:46 Rep. Welborn said that he has gained a different perspective of the BMP since the January EQC meeting and that there are different approaches being taken on block management versus conservation easements and that they meet different objectives
- 02:12:27 Sen. Brenden said that people need to know any unintended consequences before agreeing to participate in the program.
- 02:12:56 Sen. Ripley commented on FWP's response to the audit and asked if FWP is looking into how the BMP is administered. Mr. Hagener said that they are looking at ways to make the program more efficient.
- 02:17:36 Sen. Ripley commented that FWP should look at how money in the program is classified. Mr. Hagener said he will look into the accounting details.
- 02:18:28 Mr. Morris said that he has talked to sportsmen in his constituency and they are all in support of the BMP.
- 02:19:24 Sen. Brenden said that the goal is to try and make the BMP better and more efficient.
- 02:20:38 Recess
- 02:31:13 Reconvene

### **SAGE GROUSE ADVISORY COUNCIL UPDATE**

- 02:32:10 Rep. McChesney, discussed the history of the greater sage-grouse and the petition to add the sage-grouse to the Endangered Species Act (ESA). He also discussed the Greater Sage-Grouse Habitat Conservation Strategy, finalized in January, by the Greater Sage-Grouse Conservation Advisory Council, [Exhibit 7](#).

02:36:50 Sen. Hamlett discussed the Advisory Council's task to develop a plan to manage sage-grouse in Montana and the impact to the state if the greater sage-grouse is listed under the ESA. He also mentioned a study that was done showing impacts of predation.

02:41:19 Rep. McChesney said that predation is a bigger issue in Montana than in some other states and that the Advisory Council adopted language giving FWP the ability to address predation. He said that the document the Advisory Council presented to the Governor is a work in progress and will continue to evolve.

**Public comment** None

02:42:50 Tim Baker, Governor's Office, discussed the creation of the Advisory Council and the draft recommendations that were given to the governor in January. He said that the governor is in the process of moving forward with an executive order that balances the needs of the state with protection for the greater sage-grouse.

**Committee questions and discussion**

02:51:55 Rep. Lieser asked about the relationship between the executive branch and the U.S. Fish and Wildlife Service (USFWS). Mr. Baker said that his office expects to issue an executive order in April setting forth a sage-grouse program and an effective date.

02:55:11 Sen. Ripley asked for a budget report. Mr. Hagener said that the Advisory Council has spent a little over \$50,000 to date.

02:56:26 Sen. Ripley asked where the money will come from for the activities required by the executive order. Mr. Baker said that the executive branch will use current funding to get through the budget year and will ask the Legislature for funding going forward.

02:57:37 Sen. Ripley asked Mr. Baker to report back at the EQC's next meeting with the details of the expenses that an executive order will have and how and where the funding will come from.

02:58:13 Sen. Fielder asked if the USFWS has recognized the difference between grazing and over grazing. Mr. Baker said that the Natural Resource Conservation Service (NRCS) is becoming a very effective advocate for landowners and grazing practices and that the USFWS is hearing that message.

02:59:40 Sen. Fielder asked about the predation report. Sen. Hamlett said that the report will be forthcoming and that it shows that predation is a bigger issue and should be a higher priority.

03:01:41 Sen. Fielder asked for the name of report or the author. Mr. Baker said that he has the information and will get it to the legislative staff.

- 03:02:34 Mr. Aspenlieder asked how Montana's plan compares to Wyoming's plan with regard to buffer zones. Rep. McChesney said that in some areas Wyoming's plan is more restrictive, but that in other areas its plan is less restrictive.
- 03:04:08 Mr. Aspenlieder asked if Montana will rely on Wyoming science when making decisions. Rep. McChesney said that it will depend on who the Governor appoints to the oversight committee, but said he is confident that the best science available will be used.
- 03:06:17 Mr. Aspenlieder said that the Governor needs to take into account what Wyoming has done and what will help industry in eastern Montana.
- 03:08:49 Sen. Brenden asked if Wyoming still has a hunting season for sage-grouse. Mr. Hagener said that it has a limited hunting season and harvests approximately 8,000 to 9,000 birds. He said that Montana harvests between 3,000 and 5,000 birds during its hunting season.
- 03:10:01 Sen. Brenden commented on the impact of no hunting.
- 03:14:02 Sen. Fielder asked about the next animal species that could be listed on the ESA due to climate change that could affect Montana. Mr. Hagener said that the wolverine is proposed for listing because of the potential loss of high elevation snow pack.
- 03:17:26 Sen. Hamlett stated that the largest landowner that will be affected by a potential listing of the greater sage-grouse is the state of Montana.
- 03:18:46 Recess  
04:44:11 Reconvene

## **PUBLIC COMMENT**

- 04:45:03 John Youngberg, Montana Farm Bureau Federation (MFBF), commented on land exchanges.
- 04:47:10 Sen. Brenden commented on tax implications as a result of land exchanges.

## **STATUTORY ADMINISTRATIVE RULE REVIEW**

- 04:48:04 Ms. Thigpen discussed the rule review memo, [Exhibit 8](#).

**Public comment**      None

### **Committee questions and discussion**

- 04:53:35 Rep. White asked Ms. Thigpen about the ramifications of the lawsuit that was filed in Gallatin County regarding approval for a subdivision and permit for an exempt well.

- 04:56:02 Rep. White asked if the state will assist the county in defending the lawsuit. Ms. Thigpen said that she did not know, but both the county and the DNRC are named in the suit.
- 04:56:57 Sen. Keane asked about the court case involving cabin sites. Ms. Thigpen said that the case is still pending in the Lewis and Clark County District Court.
- 04:58:16 Sen. Keane asked about legislation that was passed implementing sales of cabin sites. Joe Kolman, Legislative Environmental Analyst, LSD, said that the statutes contested in the rule report are revisions that were made during the previous legislative session regarding leasing and the market value of the sites.

#### **DEQ RULEMAKING: NUTRIENT STANDARDS AND VARIANCE**

- 04:59:25 George Mathieus, Administrator, Planning, Prevention & Assistance Division, Department of Environmental Quality (DEQ), gave a history and update on DEQ's rulemaking for nutrient standards and variances.

#### **Public Comment**

- 05:04:25 Dave Galt, Executive Director, Montana Petroleum Association
- 05:12:24 Tammy Johnson, Interim Executive Director, Montana Mining Association
- 05:18:11 Jeff Tiberi, Montana Association of Conservation Districts (MACD)

#### **Committee questions and discussion**

- 05:18:53 Mr. Aspenlieder asked Mr. Mathieus about the kind of economic analysis that was done on the implementation of the rule and the associated cost.
- 05:21:39 Mr. Aspenlieder asked about the economic impact if severability language is not put into the rule and the variance request is struck, is the state left with a nutrient standard that everyone has to meet. Mr. Mathieus said that the economic impact will be significant and said SB 95 (2009) recognized those implications.
- 05:26:18 Mr. Aspenlieder said that as this moves forward, from a legislative standpoint, to be aware of the impact to industries, agriculture, and to people in the low to moderate income bracket.
- 05:28:07 Mr. Busby asked what percentage of surrounding states have numeric standards that are similar to Montana. Mr. Mathieus provided information on the Region 8 states and said that he will get information on additional states and provide it to the Council.
- 05:30:35 Mr. Busby asked Mr. Mathieus about reverse osmosis.

05:32:29 Ms. Fitzpatrick asked Mr. Mathieus about the cost to society, the economy, recreation, and tourism if the standards are not met and the water is degraded.

05:36:38 Sen. Brenden commented on the cost for clean water.

### **RENEWABLE RESOURCE GRANT AND LOAN PROGRAM UPDATE**

05:38:07 Alice Stanley, Bureau Chief, Resource Development Bureau, DNRC, gave an update on the status of the Renewable Resource Grant and Loan Program, [Exhibit 9](#).

#### **Public comment**

05:57:03 Jeff Tiberi, MACD

#### **Committee questions and discussion**

05:57:53 Rep. White asked about the grants that have gone out and if all the money has been expended. Ms. Stanley said that some projects are under contract and that all of the money is usually spent by the end of the biennium.

05:59:03 Rep. White asked about the typical time period for the grant or loan process. Ms. Stanley said that for big project grants it is a two year process.

06:00:44 Rep. White asked if DNRC determines whether wastewater projects will meet or exceed the new discharge requirements. Ms. Stanley said DNRC works with engineers to review the projects and applications and whether they are technically feasible and will meet future requirements.

06:03:23 Rep. White said that the Council should keep in mind if the standards can be met and at what cost.

06:03:58 Sen. Keane asked about the planning grants and the importance to the private sector work force. Ms. Stanley said that almost all of the projects are conducted by the private sector.

06:05:30 Mr. Aspenlieder said that he has worked with and supports the program.

### **SAND AND GRAVEL DEPOSIT PROGRAM UPDATE**

06:07:24 John Metesh, Director, Montana Bureau of Mines and Geology (MBMG) provided some background information on and gave an update of the MBMG Sand and Gravel Deposit Program, [Exhibit 10](#).

**Public comment** None

## **Committee questions and discussion**

06:17:58 Sen. Keane asked if the MBMG is working with fracking sand deposits. Mr. Metesh said that MBMG is not working with fracking sand deposits as part of the program, but it does have a grant through the Montana Board of Oil and Gas, with the Montana Tech Petroleum Department, and is looking at frack sands in Montana.

## **OTHER BUSINESS**

06:19:22 Mr. Kolman said that FWP is available to answer questions regarding the HB 609 licensing study and asked the Council for direction on the SJ 15 and SJ 4 studies.

### **HB 609 - Study of FWP hunting and fishing licenses**

06:19:59 Mr. Kolman said that the information that was requested by the Council has been provided by FWP, [Exhibit 11](#).

06:20:11 Hope Stockwell, Research Analyst, LSD, discussed the information that FWP provided to the Council.

06:24:29 Sen. Keane asked about some of the projections made by FWP. Ms. Stockwell referred the Council to the chart explaining some of the projections.

06:25:41 Sen. Brenden commented on the projected costs.

06:28:11 Mr. Kolman said that the Advisory Council is looking for direction on bill drafts so that the EQC can consider them at the meeting in May.

06:29:17 Mr. Kolman asked whether the EQC approved publication of the Pittman-Robertson funding brochure.

06:29:49 Sen. Ripley asked about a brochure on the Dingell-Johnson Act. Mr. Kolman said staff will look at putting a brochure together during this interim or the next interim.

### **SJ15 - Federal Land Management Study**

06:30:33 Mr. Kolman asked for the Council's direction on SJ 15.

06:30:51 Sen. Brenden said there was good discussion during the meeting and the Council should continue to bring the federal and state groups together.

06:33:10 Sen. Keane said the Council needs to consider the smaller counties that are having problems with the federal land managers and consider working with MACo on the possibility of an MOU.

- 06:34:26 Rep. White said that counties want to get involved with the work group and requested that staff get information from the National Association of Counties on an MOU. He also suggested training for employees of the federal government that have the responsibility of managing forest lands on working with local counties.
- 06:36:10 Rep. Lieser said that the Council made numerous requests to the deputy regional forester that will need to be followed through.
- 06:36:53 Sen. Fielder said that the next work group meetings are scheduled for April 3 and April 17 and the group will start outlining what actions need to be taken.
- 06:37:30 Sen. Brenden said to call the legislative staff with any questions.
- 06:37:50 Ms. Fitzpatrick commented on the difficulty of local governments working with the federal government and asked if specific legislation needs to be repealed or enacted.
- 06:39:14 Sen. Brenden adjourned the meeting at 2:56 p.m.

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