



ENVIRONMENTAL QUALITY COUNCIL

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JERRY BENNETT
BILL MCCHESENEY
MICHELE REINHART
CARY SMITH
KATHLEEN WILLIAMS

SENATE MEMBERS
JIM KEANE--Chair
JOHN BRENDEN
BRADLEY MAXON HAMLETT
RICK RIPLEY
CHAS VINCENT
GENE VUCKOVICH

PUBLIC MEMBERS
DEXTER BUSBY
DIANE CONRADI
MARY FITZPATRICK
JOHN YOUNGBERG

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

MINUTES

Approved July 18, 2012

May 1, 2012

Room 172
State Capitol Building

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.

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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. JIM KEANE, Chair
REP. DUANE ANKNEY, Vice Chair

SEN. JOHN BRENDEN
SEN. BRADLEY MAXON HAMLETT
SEN. CHAS VINCENT
SEN. GENE VUCKOVICH

REP. JERRY BENNETT
REP. BILL MCCHESENEY
REP. KATHLEEN WILLIAMS

MR. DEXTER BUSBY
MS. MARY FITZPATRICK
MR. JOHN YOUNGBERG

COMMITTEE MEMBERS EXCUSED

SEN. RICK RIPLEY
REP. MICHELE REINHART
REP. CARY SMITH
MS. DIANE CONRADI
MR. MIKE VOLESKY

STAFF PRESENT

JASON MOHR, Research Analyst
SONJA NOWAKOWSKI, Research Analyst
HOPE STOCKWELL, Research Analyst
HELEN THIGPEN, Staff Attorney
KEVIN MCCUE, Secretary
JOE KOLMAN, Legislative Environmental Analyst

Visitors

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

COMMITTEE ACTION

The Environmental Quality Council:

- adopted the minutes from its March 7 and 8, 2012 meetings.
- voted to retain the Future Fisheries Improvement Program report.
- requested that a bill be drafted which would eliminate the Alternative Livestock Advisory Council.
- voted to retain the Boating Advisory Council.
- voted to retain the Private Land/Public Wildlife Advisory Council report.
- voted to retain the Wetlands Protection Advisory Council.
- voted to retain the report on the Upland Game Bird Program and the review of the Upland Game Bird Citizens Advisory Council.
- adopted LC 9021 and LC 9020.
- requested public comment regarding LC LJ 11.

CALL TO ORDER AND ROLL CALL

00:00:00 Sen. Keane called the meeting to order and roll was noted ([Attachment 3](#)).

AGENDA

00:01:24 Sen. Brenden asked Sen. Keane if he had received revenue figures from the Department of Fish, Wildlife and Parks (DFWP) on its wolf program. Mr. Kolman said that information was included in the meeting materials. Mr. Youngberg moved to adopt the minutes from the EQC's previous meeting. The motion passed unanimously by voice vote.

- 00:02:43 Mr. Kolman said the EQC's budget stood at \$44,000 and is on target with three meetings left. Sen. Keane asked if there would be any surplus funds. Mr. Kolman said there probably would not be a surplus.
- 00:03:40 Sen. Keane instructed the EQC on procedure for its field trip the next day.
- 00:05:09 Sen. Keane reported on the Select Committee on Efficiency in Government, Natural Resources Subcommittee meeting in Butte.

HB 142 - REVIEW OF STATUTORILY-REQUIRED AGENCY REPORTS AND ADVISORY COUNCILS FOR DFWP

- 00:06:18 Ms. Stockwell reported on HB 142. Ms. Stockwell said there had been two bill draft requests that would be covered later in the meeting by Mr. Mohr. Ms. Stockwell reported on the EQC's letter to Legislative Council which had requested appointments be made to the Small Business Compliance Assistance Advisory Council (SBCAAC). Ms. Stockwell presented background information on advisory councils and reports .

Future Fisheries Improvement Program report, 87-1-272, MCA

- 00:08:28 Bruce Rich, Chief of Fisheries, DFWP, reported on the Future Fisheries Improvement Program ([EXHIBIT 1](#)).

Public Comment

None.

EQC Questions, Discussion, and Action, if any

- 00:12:47 Sen. Keane asked if the washout of the Magpie Creek fish passage would be addressed. Mr. Rich said he did not know details about that site but would followup. Sen. Keane asked Mr. Rich to elaborate on the Annual Perch Habitat Project. Mr. Rich said the project was done in conjunction with Walleyes Unlimited and placed Christmas trees in Canyon Ferry Lake for perch spawning habitat. Sen. Keane asked if anything was being done to increase spawning of other fish in Canyon Ferry Lake. Mr. Rich said the Magpie Creek project was intended to increase spawning for rainbow trout and that wild fish are successful on their own. Sen. Keane asked how the program could be contacted by EQC members. Mr. Rich said they should contact the fish manager at their regional office or Mark Lere in Helena at 406-444-2449.
- 00:16:25 Rep. Williams noted that cancelled projects were not included in the table and asked Mr. Rich to describe typical reasons for cancellation. Mr. Rich cited an example in which a stream bank restoration project was cancelled due to major geographical changes. Rep. Williams said 12 projects were cancelled in 2006 and asked if they were usually cancelled by applicant request or program initiative. Mr. Rich said some applicants request cancellation. Rep. Williams cited instances in the list of projects in which DFWP is the applicant or partial applicant

and asked how the agency is considered in the application process. Mr. Rich said DFWP competes similarly with other applicants. Rep. Williams asked if there is a limit on how many projects could be advanced by the agency. Mr. Rich said there is not.

00:19:58 Sen. Hamlett asked Mr. Rich if there had been increased flow because of fires or effects from sedimentation at the Magpie Creek site. Mr. Rich said there were a number of significant fires in that area and the lower ends of some streams changed due to debris and sediment. Sen. Hamlett asked if it was affecting fisheries adversely. Mr. Rich said it might be in tributaries but not in the reservoir fishery.

00:21:58 Sen. Brenden said he sat on the Future Fisheries Committee and said he felt eastern Montana was often slighted in terms of projects. Sen. Brenden asked that Mr. Rich supply a list of projects from 2009 along with the percentage of projects that went to eastern Montana. Mr. Rich said he would provide the information.

00:23:07 Rep. Ankney moved that the EQC retain the Future Fisheries report. The motion passed 14-2 by voice vote. Sen. Brenden and Sen. Ripley voted no by proxy. Rep. Reinhart and Ms. Conradi voted yes by proxy.

00:23:49 Sen. Vincent asked that the figures requested by Sen. Brenden be provided through 2011.

Alternative Livestock Advisory Council

00:24:47 Jim Kropp, Law Enforcement Chief, DFWP, said that I-143 (2000) limited game farmers and prohibited commercial hunting of game farm animals on those facilities. As such, Mr. Kropp advised that the Alternative Livestock Advisory Council be disbanded.

Public Comment

None.

EQC Questions, Discussion, and Action, if any

00:26:46 Rep. Ankney moved that a bill be drafted which would eliminate the Alternative Livestock Advisory Council. Sen. Hamlett voted no. All other members voted yes. Sen. Ripley, Rep. Reinhart and Ms. Conradi voted yes by proxy.

Boating Advisory Council

00:27:50 Chas Van Genderen explained the role of the Boating Advisory Council (BAC). Mr. Van Genderen said the BAC had been dormant since 2006 or 2007 and that there had been no call from the public for its continuation.

Public Comment

None.

EQC Questions, Discussion, and Action, if any

- 00:29:41 Sen. Brenden asked Mr. Van Genderen if boating restrictions came before the Fish, Wildlife, and Parks Commission. Mr. Van Genderen said they do.
- 00:30:15 Sen. Keane asked what would happen to the BAC's funding since it had not met. Mr. Van Genderen said those funds would be used in parks and at fishing sites.
- 00:31:30 Rep. Ankney asked if it might be good to retain the BAC as it might have a place in the Parks Commission's future. Mr. Van Genderen said the BAC has a place but that its limited scope is too narrow a focus.
- 00:33:31 Sen. Keane asked if the BAC would be brought under the Fish and Wildlife Commission or the Parks Board if a new board were to be put in place. Mr. Van Genderen said policy review would go under Parks and Recreation.
- 00:34:45 Rep. Ankney moved to maintain the BAC.
- 00:35:46 Sen. Brenden asked for the BAC's annual budget. Mr. Van Genderen said the amount of money typically associated with the operation of the BAC was anywhere from \$225,000 to \$450,000.
- 00:36:49 Rep. Ankney's motion carried unanimously by roll call vote (**EXHIBIT 2**). Sen. Ripley, Rep. Reinhart, Rep. Smith, and Ms. Conradi voted yes by proxy.
- 00:37:57 Sen. Keane said although the vote had been unanimous he was sensing hesitation from the EQC and asked Mr. Van Genderen to report back with recommendations regarding the BAC. Mr. Van Genderen said he would reconvene the BAC and ask for its recommendations regarding how it could be better operated.

Private Land/Public Wildlife Council report, 87-1-269

- 00:39:12 Ken McDonald, Chief of Wildlife, DFWP, provided an overview of the Private Land/Public Wildlife Advisory Council's January 2011 report (**EXHIBIT 3**). Mr. McDonald spoke concerning the report's information regarding the access program, whose flagship is the block management program. Mr. McDonald said the Council had addressed problematic wildlife concentrations, also known as "harboring," and made recommendations to DFWP. Mr. McDonald recounted the Council's informal actions regarding I-161 (2010), the initiative that did away with variably priced licenses.

Public Comment

None.

EQC Questions, Discussion, and Action, if any

- 00:44:24 Sen. Brenden asked Mr. McDonald how many hunter days a hunter would use up if they were to hunt on two block management areas in the same day. Mr. McDonald said it would count as one hunter day at each site. Sen. Brenden said this was his problem with hunter days. Sen. Brenden said he was a fan of block management but had criticized it in the past as some areas are so over-grazed that they support no big game and asked what could be done to encourage good block management. Mr. McDonald said Sen. Brenden's concept was good but could become subjective and generate a large workload. Mr. McDonald said evaluations of land were done by regional staff. Sen. Brenden asked for the percentage of administrative overhead for block management. Mr. McDonald said it accounted for 11% of the program's budget.
- 00:48:17 Rep. Ankney asked if site visits were conducted when applicants sign up for block management. Mr. McDonald said the DFWP relies on its field staff who may be familiar with a large area. Rep. Ankney asked if a farmer could sign up for block management of land that is in the Conservation Resource Program (CRP). Mr. McDonald said that they could.
- 00:49:24 Mr. Youngberg asked if there was a block management requirement that an applicant must sign up all of their acres or just part. Mr. McDonald said applicants could sign up part of their acres and that would be the part to receive evaluation. Mr. Youngberg asked how many of the issues brought before the Council had they reached consensus on besides block management. Mr. McDonald deferred to Alan Charles, Coordinator of Landowner-Sportsmen Relations, DFWP who said the Council had reached consensus on at least a dozen issues outside of block management.
- 00:52:10 Sen. Vuckovich asked Mr. Charles how long land would remain in block management upon approval. Mr. Charles said landowners were typically enrolled on an annual basis for up to four years. Sen. Vuckovich said he had spoken to ranchers in the Avon area upset by block management because of the wolf issue who were talking about getting out of the program and asked Mr. Charles if they would have to remain in the program for four years. Mr. Charles said all the contracts have escape clauses.
- 00:54:11 Rep. Ankney moved that the EQC retain the Private Land/Public Wildlife Advisory Council report. The motion passed unanimously by voice vote. Sen. Ripley, Rep. Reinhart, Rep. Smith, and Ms. Conradi voted yes by proxy.

HB 142 AND SJR 26 – COMBINED DUTIES

Migratory Game Bird Program Update, Ken McDonald, DFWP

Review of Wetlands Protection Advisory Council

- 00:55:05 Mr. McDonald provided an update on the Migratory Game Bird Program ([EXHIBIT 4](#)).

Public Comment

- 01:00:28 Robert Sanders, Ducks Unlimited, applauded the program and said it is a powerful tool for wetland and waterfowl conservation.
- 01:01:38 Joe Perry, Conrad, recounted his experience as a landowner who has used the program.
- 01:03:04 John Borgreen, Russell Country Sportsmen, offered support for the program. Mr. Borgreen told the EQC that his group recommended that the U.S. Fish and Wildlife Service seek an alternative course of action in regard to its 10 year Civilian Conservation Corps (CCC) program, especially at the Benton Lake Waterfowl Management Area near Great Falls.

EQC Questions, Discussion, and Action, if any

- 01:04:51 Sen. Brenden stated that he believed there is a conflict of interest regarding Henry Gordon's presence on the Wetlands Protection Advisory Council.
- 01:05:42 Sen. Hamlett commented, in regard to the Benton Lake Refuge, that the Federal government spent a lot of money acquiring wetlands it now wanted to get rid of.
- 01:06:16 Rep. Ankney moved to retain the Wetlands Protection Advisory Council. The motion carried unanimously by voice vote. Sen. Ripley, Rep. Reinhart, Rep. Smith, and Ms. Conradi voted yes by proxy.

(BREAK)

Upland Game Bird Program Update, Ken McDonald, DFWP

Review of statutorily-required report, 87-1-250, MCA Review of Upland Game Bird Citizens Advisory Council

- 01:26:34 Mr. McDonald recapped the 2009 audit of the Upland Game Bird Program (**EXHIBIT 5**) and listed accomplishments of the Upland Game Bird Citizens' Advisory Council. Mr. McDonald noted that the pheasant stocking program would continue.
- 01:36:55 Ms. Stockwell distributed the Council's Annual Meeting Report (**EXHIBIT 6**).

Public Comment

- 01:37:29 Joe Perry, Conrad, Chair of the Upland Game Bird Citizens' Advisory Council, said the Council had accomplished a great deal.

EQC Questions, Discussion, and Action, if any

- 01:38:14 Sen. Brenden asked Mr. Perry how the Council voted regarding pheasant feeding. Mr. Perry said the vote had been approximately 9-3. Mr. Perry said Plentywood was the only part of the state with a demand for pheasant feeding.

Mr. Perry said grain elevators had made a point of spreading awareness that grain is available on the tracks all winter and that this arrangement seemed to satisfy interests across the state, except for some in Sen. Brenden's area.

- 01:42:03 Rep. Williams pointed to the Council report's two conflicting references to "15%" of pheasants released and asked Mr. McDonald if a statutory change would be necessary for clarification. Mr. McDonald said the original statute stipulated that not more than 15% of the program's income could be used for administrative purposes but that HB 499 (2009) did away with that 15% cap. Mr. McDonald said another part of statute required that at least 15% of the program's budget be used for pheasant stocking. Rep. Williams asked Mr. Perry if the Council preferred that the 15% release figure be dealt with in rule and not in statute. Mr. Perry answered affirmatively and said that Rep. Julie French had made clear that the Council's charge was not to change the original statute, but rather to develop the pheasant stocking program. Mr. Perry said sportsmen across the state do not like the pheasant stocking program.
- 01:47:08 Sen. Keane asked Mr. McDonald if any upland game birds were present in western Montana. Mr. McDonald said that although eastern Montana's pheasants receive the most attention, there are other types of game birds (grouse, turkeys, etc.) in western Montana. Sen. Keane asked if the provided list applied just to pheasants. Mr. McDonald said the list comprised all projects in the period covered but the program emphasizes the sage grasslands of eastern Montana. Sen. Keane asked if this was fair to those hunting birds in western Montana. Mr. McDonald said it is a landowner-driven, cost-share program and said he would bring Sen. Keane's concerns regarding the program's equity to the field staff.
- 01:52:35 Sen. Vuckovich asked Mr. McDonald why the harvest of grouse has dropped. Mr. McDonald said interest among hunters and changes in habitat, specifically conifer encroachment, could account for the changes and noted the program's work with the U.S. Forest Service on aspen regeneration projects. Sen. Vuckovich recalled the former pheasant farm at Warm Springs and asked if there were any plans to replace it. Mr. McDonald said it was not the department's preference to replace the farm and that it preferred to encourage habitat development.
- 01:55:37 Mr. Youngberg said he had read statistics citing predators as a major killer of grouse and asked if it had been discussed by the Council. Mr. Perry said the issue had been raised but the Council's focus is habitat.
- 01:56:48 Rep. McChesney commented that predator species have decreased the numbers of mountain grouse in western Montana and said farm raised pheasants do not do well when introduced to the wild.
- 01:59:00 Sen. Hamlett asked Mr. McDonald for the cost of releasing a pheasant from start to finish. Mr. McDonald said each bird costs \$8.75 in addition to mileage paid to the pheasant raiser and that last year \$107,000 was paid for 12,000 birds. Sen. Hamlett asked what is done if weather events kill a lot of pheasants. Mr. McDonald said the Department tries to establish populations in areas where

pheasants are not located. Sen. Hamlett asked if the state has established more core pheasant populations. Mr. McDonald said there had not been a large-scale attempt to do so in decades.

- 02:07:52 Sen. Brenden said the Chinese pheasant is not indigenous to the U.S. and does not do well in harsh winter conditions compared to the grouse or Hungarian partridge. Sen. Brenden introduced documents related to upland game birds. ([EXHIBIT 7](#)).
- 02:13:39 Rep. Ankney moved to retain the report on Upland Game Birds and the review of the Upland Game Bird Citizens Advisory Council.
- 02:14:08 Sen. Brenden proposed an amendment to Rep. Ankney's motion entailing the word "will" would not be replaced with "may" in rule.
- 02:14:45 Mr. Kolman said that the amendment would not fit within the notice of today's agenda and would require a new item at another meeting.
- 02:15:26 Sen. Brenden withdrew his motion.
- 02:15:33 Rep. Ankney's original motion passed unanimously by voice vote. Sen. Ripley, Rep. Reinhart, Rep. Smith and Ms. Conradi voted yes by proxy.

HB 142 – REVIEW OF REQUESTED BILL DRAFTS

Elimination of Air Pollution Control Advisory Council (LC 9021) – Mr. Mohr

- 02:16:35 Mr. Mohr reviewed LC 9021, a bill draft that would remove the functions and duties of Air Pollution Control Advisory Council (APCAC) from statute ([EXHIBIT 8](#)).

Public Comment

None.

EQC Questions, Discussion, and Action, if any

- 02:19:03 Rep. Ankney moved to proceed with bill draft LC 9021. The motion carried unanimously by voice vote. Sen. Ripley, Rep. Reinhart, Rep. Smith, and Ms. Conradi voted yes by proxy.

Wildland Urban Interface (WUI) Designation Reporting (LC 9020) – Mr. Mohr

- 02:19:45 Mr. Mohr reviewed LC 9020, a bill draft that would eliminate the requirement that the Department of Natural Resources and Conservation submit a progress report for the designation of WUI parcels ([EXHIBIT 9](#)).

Public Comment

None.

EQC Questions, Discussion, and Action, if any

02:21:19 Sen. Vincent moved to adopt LC 9020. The motion passed unanimously by voice vote. Sen. Ripley, Rep. Reinhart, Rep. Smith and Ms. Conradi voted yes by proxy.

EMINENT DOMAIN

Update on LJIC Bill Draft – Sonja Nowakowski

02:22:30 Ms. Nowakowski reported on issues related to HB 198 (2011) and LC LJ 11, a bill draft that would require that the EQC's eminent domain handbook "Eminent Domain in Montana" be included with all condemnation complaints. (**EXHIBIT 10**) Ms. Nowakowski said the Law and Justice Interim Committee (LJIC) voted unanimously to bring LC LJ 11 before the 2013 Legislature and that its work regarding eminent domain is complete.

Presentation of draft report – Ms. Nowakowski

02:27:00 Ms. Nowakowski presented the EQC with a draft report entitled "Public Uses and Eminent Domain" (**EXHIBIT 11**). Ms. Nowakowski said the draft would be updated to include new information on the MATL case and an updated draft of LC LJ 11.

Public Comment

None.

EQC Questions, Discussion, and Action, if any

02:28:45 Sen. Keane asked how public comment could be gathered in regard to the report. Mr. Kolman explained how public comment is gathered. Sen. Keane moved that public comment be gathered.

02:30:03 Sen. Brenden asked if the price of an easement had to be included under LC LJ 11. Ms. Nowakowski said it did not outline what occurs in such negotiations and that the only change to law would be the addition of the handbook.

02:31:20 Sen. Keane's motion passed unanimously by voice vote. Sen. Ripley, Rep. Reinhart, Rep. Smith, and Ms. Conradi voted yes by proxy.

Public Comment on any matter not contained in agenda and that is within the jurisdiction of the EQC

None.

02:35:01 Sen. Keane called a recess until May 3, 2012.

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