



ENVIRONMENTAL QUALITY COUNCIL

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KEVIN MCCUE, Secretary
JOE KOLMAN, Legislative Environmental Analyst

MINUTES

Approved July 18, 2012

May 3, 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. DIANE CONRADI
MS. MARY FITZPATRICK

MR. JOHN YOUNGBERG

COMMITTEE MEMBERS EXCUSED

SEN. RICK RIPLEY
REP. MICHELE REINHART
REP. CARY SMITH
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 EQC voted to advance LC 9000 as a committee bill.

CALL TO ORDER AND ROLL CALL

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

AGENDA

HJ 32 -- Study of state parks, outdoor recreation, and heritage resource programs

Review of Bill Drafts (LC 9000, LC 9001, LC 9002) -- Ms. Stockwell

00:01:11 Ms. Stockwell began her introduction of bill drafts requested at the EQC's last meeting and explained that each draft entailed a new governing body for the Parks Division separate from the Fish, Wildlife and Parks (FWP) Commission. Ms. Stockwell provided the Council with a document summarizing which programs would be under which authority in each draft ([EXHIBIT 1](#)).

00:07:22 Ms. Stockwell provided a detailed description of LC 9000 ([EXHIBIT 2](#)).

00:16:52 Sen. Brenden asked if DFWP could condemn private land if it contained a historic feature such as Pompey's Pillar. Ms. Stockwell said that the draft appeared to support such an interpretation at first glance. Mr. Kolman added that statute provides for sites "threatened with destruction or alteration."

00:18:12 Ms. Stockwell resumed her overview of LC 9000.

Public Comment

00:30:52 George Golie, Montana Game Wardens Association (MGWA), said MGWA does not care if a new board is established but would object to the Parks Division taking any enforcement authority or revenue that now goes to Game Wardens. Mr. Golie said cost would have to be addressed if Parks was to take over and asked that EQC not gut the Enforcement Division.

00:34:58 Chas Van Genderen, Administrator of the Parks Division, DFWP, said the department had not taken a position on the drafts and advocated the implementation of the best public policy for the citizens and State of Montana.

EQC questions, discussion, and action, if any

00:36:17 Sen. Brenden asked Ms. Stockwell if a fiscal note had been done on LC 9000, specifically an assessment of the present Commission's yearly expenses as well as the new expenses associated with establishing a new board within the Division. Ms. Stockwell said a full fiscal note analysis had not been conducted but expenses of the current FWP and Montana Heritage and Preservation Development Commissions (MHC) had been examined at the EQC's last meeting. Ms. Stockwell said the current FWP Commission's budget was between \$30,000-40,000 and the MHC's was \$5,000. Ms. Stockwell said DFWP estimated the cost of a new Parks Board at around \$9,000 and that she anticipated an increase to this figure as the proposed Board was now to be quasi-judicial.

00:38:36 Ms. Conradi asked Ms. Stockwell if the MHC is a quasi-judicial board. Ms. Stockwell said that it is not. Ms. Conradi asked if the MHC has rules and, if so, who makes them. Ms. Stockwell said the MHC does not have rulemaking authority.

00:39:25 Sen. Hamlett asked for a representative from DNRC. There was no representative present. Sen. Hamlett asked that DNRC provide its opinion regarding jurisdiction of waters.

00:40:32 Ms. Stockwell pointed to section 20 of LC 9000 which contains boating regulations and said that the description of jurisdiction found there over recreational use of waters would not likely conflict with the other DNRC positions regarding water jurisdiction that had been discussed this interim.

00:41:18 Rep. Williams asked Ms. Stockwell if enforcement was being changed under LC 9000. Ms. Stockwell said that it was not changing. Rep. Williams asked if personal water craft are considered boats. Ms. Stockwell said that they are. Rep. Williams asked Mr. Van Genderen if the State has river rangers on the Smith and other rivers. Mr. Van Genderen said they do. Rep. Williams said if the Smith was the only river to come under the new management authority other recreational river rangers would need to be considered.

- 00:43:18 Rep. McChesney commented that the Parks Division should be moved to the Department of Commerce (DOC) in order to maximize the fiscal potential of state parks.
- 00:44:30 Ms. Stockwell commented on the Council's questions regarding enforcement. She said LC 9000 does not change the way enforcement occurs now and leaves its details to the Department.
- 00:45:08 Ms. Stockwell explained LC 9001 (**EXHIBIT 3**).
- 00:47:10 Sen. Brenden asked Ms. Stockwell what would happen under section 2 of the bill draft's construction if costs were to exceed \$5,000. Ms. Stockwell said she was also perplexed by this section of statute and that it could be removed if the EQC chose to do so. Sen. Brenden cited a section of statute that allowed DFWP to spend up to \$100,000 and said the two statutes conflicted. Sen. Brenden said this discrepancy should be fixed regardless of what is done. Ms. Stockwell clarified that the aforementioned \$5,000 cap referred to construction projects and that the \$100,000 figure pertained to land acquisition.
- 00:48:56 Sen. Keane asked Mr. Van Genderen if DFWP had a list of projects that cost between \$1,000 and \$5,000 that had been approved by the FWP Commission. Mr. Van Genderen said the Department did not have that list specifically but that his Division's budget is brought before the Commission for approval before each legislature.
- 00:50:19 Ms. Stockwell resumed her overview of LC 9001.

Public Comment

- 00:53:57 Elijah Allen, MHC Business and Development Manager, emphasized the value of the Department of Commerce to the MHC. Mr. Allen presented the EQC with a letter from the Madison County Commissioners (**EXHIBIT 4**) and reminded the Council of recommendations made by the Mayor of Virginia City and the Madison County Chamber of Commerce who favor the Parks Division staying with the Department of Commerce.
- 00:57:21 Joe Callanan, member of the Ancient Order of Hibernians in Helena, explained the Hibernians' connection to Virginia City and recounted their efforts toward maintenance of Virginia City assets over the last 15 years. Mr. Callanan said the Hibernians would oppose moving administration of Virginia and Nevada Cities to the Parks Division at DFWP and that they would prefer to maintain the relationship between the MHC and the Department of Commerce (**EXHIBIT 5**).

EQC questions, discussion, and action, if any

None.

- 01:03:39 Ms. Stockwell explained LC 9002 (**EXHIBIT 6**).

Public Comment

None.

EQC questions, discussion, and action, if any

- 01:05:45 Ms. Fitzpatrick pointed to the membership requirements in LC 9002 and noted that the duties section does not reference the members' specialties and that those attributes may need to be spelled out more. Ms. Stockwell said the EQC could further develop the passage in question.
- 01:06:39 Ms. Conradi asked Ms. Stockwell how the MHC's staffing authority would change under LC 9002. Ms. Stockwell said staffing authority was covered in the section of the draft containing powers and duties (LC 9002, section 12, page 16.) Ms. Conradi asked if hiring authority would go to the department and recommendations regarding acquisition would go to the board. Ms. Stockwell answered affirmatively.
- 01:09:12 Sen. Keane opened the floor to the Council for a wider discussion on the Parks issue. Sen. Keane said there were incredible opportunities for development and that he had been impressed by the human capital available in Parks' sites. Sen. Keane asked the EQC what could be done to help and stressed that if steps are taken they should actually be supported.
- 01:13:41 Sen. Brenden asked Mr. Allen for the MHC's annual budget. Mr. Allen said the operating budget is currently \$965,000 and would be reduced to \$800,000. Sen. Brenden said he was impressed by yesterday's tour. Sen. Brenden said if a new organization was to change its name to simply "Parks" it would still be considered part of DFWP by the public. Sen. Brenden said that Commerce is thought of in a more positive light than DFWP. Sen. Brenden said he opposed all three proposals and that he thinks each would create another bureaucracy.
- 01:17:34 Rep. McChesney said he was not enamored with any of the bill drafts and was more convinced than ever that State Parks belong with Commerce. Rep. McChesney proposed another bill draft that would move Parks to Commerce and retain the MHC as an advisory board.
- 01:19:44 Sen. Keane said it was too late in the EQC process to propose that piece of draft legislation but that Rep. McChesney could bring such a bill on his own next session.
- 01:20:17 Rep. Ankney spoke regarding LC 9001 and 9002, saying that the proposed move of the MHC was meant to gain resources and help with restoration and maintenance. Rep. Ankney said he did not think either bill worked and that he thought efforts needed to be made to bring in more state resources to help the Parks. Rep. Ankney said he was in favor of leaving the organizations as they are but that certain things needed to be done. Rep. Ankney said he would like to see a board set up for Parks and that LC 9000 was good place to start.

- 01:24:36 Ms. Conradi commended the staffs of Virginia and Nevada Cities and Lewis and Clark Caverns. Ms. Conradi said although she could see how combining the state's outdoor and cultural heritage assets could increase efficiency, they are actually different beasts. Ms. Conradi expressed support for LC 9000. Ms. Conradi said there is a need for a forum for recreation concerns in the state and the state has a long term interest in aligning outdoor heritage and cultural heritage interests. Ms. Conradi proposed a hybrid of the bill drafts that would create a Park Board, integrate the MHC in that Board, and give that Board a time period for planning the integration of outdoor and cultural heritage assets.
- 01:28:29 Rep. McChesney said he agreed with Rep. Ankney and Ms. Conradi. Rep. McChesney said he liked the idea of a representative of the MHC reporting to the Parks Board to begin integration. Rep. McChesney proposed the EQC add a caveat to the draft legislation that would require the Parks Board to develop a business plan for each individual park.
- 01:29:43 Ms. Stockwell said that such requirements could be stipulated and that the Parks Division currently generates management plans for each park.
- 01:30:49 Rep. McChesney asked Mr. Van Genderen to describe the management plans generated by the DFWP and asked if the plans were park-specific or business plans. Mr. Van Genderen said management plans addressed management issues related to the specifics of each park and that there was no specific business focus.
- 01:32:05 Rep. Williams said that the study had been brought forward because of two issues, money and organization. Rep. Williams said the representatives of Virginia City made a valid case for allowing them two more years to try their new direction. Rep. Williams said she does not consider state parks and recreation-related authorities and duties as related only to tourism. Rep. Williams said the parks fulfill the needs of Montana families. Rep. Williams said she was not sure the Parks Division belonged with the Department of Commerce. Rep. Williams proposed keeping LC 9000 alive while also working on a strategic plan for the whole system. Rep. Williams said she had structural suggestions for LC 9000 and asked the Chair how to proceed with those recommendations.
- 01:36:20 Sen. Keane described the process of proceeding with the bill drafts.
- 01:37:07 Ms. Conradi suggested the EQC work with the Parks Division on improving public access to areas like Flathead Lake and that the new forum a parks board could provide would be appreciated.
- 01:38:13 Sen. Brenden proposed that the confusion over approval of construction project expenditures be removed and suggested the next draft stipulate that any spending over \$5,000 come before the board. Sen. Keane agreed.
- 01:40:02 Sen. Vincent agreed with the Council's comments and said LC 9000 warranted a further look. Sen. Vincent said he was not sure this ship would float but would like to see in two years what has happened.

- 01:43:09 Sen. Hamlett addressed the issue of interagency land transfers. Sen. Hamlett pointed to the DNRC land in Lewis and Clark Caverns State Park. Sen. Hamlett said these mistakes were not a fault of the agencies but of laws. Sen. Hamlett said he feels marketing is an important issue to parks and historic sites. Sen. Hamlett recommended the EQC leave the MHC where it is and let Virginia and Nevada Cities have their own board with local control as opposed to having one member on a Parks Commission.
- 01:50:27 Ms. Fitzpatrick agreed with the comments that culminated in Ms. Conradi's proposal.
- 01:51:28 Rep. Ankney moved LC 9000 as a committee bill.
- 01:52:16 Ms. Stockwell asked for clarification of Rep. Ankney's motion. Ms. Stockwell and Sen. Keane came to an understanding that staff was to move forward with the bill draft and that it be sent out for public comment. Sen. Keane said the bill drafts first alteration should be Ms. Conradi's stipulations that a member from the MHC serve on the Commission.
- 01:53:38 Mr. Kolman noted that bill drafts were always open for public comment but that the official public comment period comes at the end of the process (August 2012).
- 01:58:46 Rep. Ankney's motion passed unanimously by voice vote. Sen. Ripley, Rep. Reinhart, and Rep. Smith voted yes by proxy.
- 01:59:10 Sen. Keane asked Mr. Kolman to address Sen. Vincent's proposal regarding the MHC.
- 02:00:03 Mr. Kolman explained that although the EQC's statutory oversight does not deal with the Department of Commerce the Council could still request information from the DOC. Mr. Kolman said the EQC could ask to hear from the MHC regarding the properties in question during the next interim. Mr. Kolman said another more formal option would be to draft a committee bill calling for a study resolution. Mr. Kolman said the EQC also had the less formal option of working with the Economic Affairs Interim Committee.
- 02:01:29 Sen. Keane expressed interest in the formal option.

(BREAK)

Reserve Water Rights Compact Commission (RWRCC) Update

Bill Schultz, commission administrator

- 02:25:11 Mr. Schultz made a PowerPoint presentation on the RWRCC (**EXHIBIT 7**).

Public Comment

None.

EQC questions, discussion, and action, if any

- 03:01:50 Sen. Hamlett reminded the EQC that the Montana Constitution states that all the waters within its boundaries belong to the state of Montana but that the result of the RWRCC's proposal would be a loss of water to the federal government. Sen. Hamlett warned against the potential harm of executive orders such as those associated with the Indian Treaties and asked Mr. Schultz for his insight into the matter. Mr. Schultz said that the State of Montana has a history of negotiating federal reserved water rights and that the alternative to that is litigation with the federal government.
- 03:05:23 Sen. Vincent asked Mr. Schultz for an update on any progress made regarding the off-reservation proposal discussed at a recent meeting between the RWRCC and the Lincoln County Commissioners. Mr. Schultz said the RWRCC had received comments by County Commissioner Berget and was awaiting comments on the proposal from the Confederated Salish and Kootenai Tribes (CSKT). Sen. Vincent noted he had observed a lack of interface by the RWRCC with the entities being impacted by the off-reservation proposal and will await amendments to the proposal.
- 03:11:01 Sen. Vuckovich asked Mr. Schultz if the Clark Fork River flows through the Confederated Salish Kootenai Reservation. Mr. Schultz said the Upper Clark Fork does not flow through the Flathead Indian Reservation. Sen. Vuckovich asked why, then, is the RWRCC negotiating with the Salish Kootenai. Mr. Schultz said that unique to this negotiation was an off-reservation proposal. Mr. Schultz said the Hellgate Treaty of the CSTK is a Stephens Treaty which contains provisions that allow for off-reservation flows to maintain fisheries habitat. Mr. Schultz said the off-reservation proposal includes several basins, including the Upper Clark Fork, that do not flow through the reservation.
- 03:14:28 Sen. Hamlett asked Mr. Schultz if there had ever been a clause in any of the earlier compacts that entailed there be no further executive orders issued on the compacts. Mr. Schultz said all compacts include a finality clause. Sen. Hamlett asked for an explanation of such finality clauses. Mr. Schultz deferred to Jay Weiner, staff attorney, RWRCC.
- 03:15:42 Mr. Weiner said the water compacts are the final quantification of the reserved water rights for the federal enclave or Indian reservation that the compact pertains to. Mr. Weiner said one condition of entering into such settlements is that the U.S. or the U.S. and the tribe waives all other claims they could bring for water rights for that particular federal enclave or Indian reservation.
- 03:16:50 Sen. Hamlett asked Mr. Weiner if an executive order could be issued down the road. Mr. Weiner said the RWRCC has no power to bind the Montana Legislature or the Office of the President.

03:17:44 Rep. Williams asked Mr. Schultz if staff from the RWRCC was being moved to the Water Court. Mr. Scultz said staff was being moved to the Water Resources Division.

Administrative Rule Review

General overview - Ms. Thigpen

03:18:58 Ms. Thigpen presented an updated rule memo (**EXHIBIT 8**) with emphasis on rules that had been recently adopted.

EQC questions, discussion, and action, if any

03:26:36 Sen. Brenden objected to the Upland Game Bird Enhancement Program's (EGBEP) replacement of the word "will" with "may."

03:27:21 Sen. Keane asked Ms. Thigpen to provide the EQC with the locations of meetings related to the EGBEP. Ms. Thigpen said that a hearing had already been held but that rules had not been adopted and that she would bring Sen. Brenden's concern to the department.

03:28:39 Sen. Keane requested maps explaining how the department plans to clean up Eurasian Water Milfoil.

SB 35 rule update - Ms. Thigpen

03:31:39 Ms. Thigpen updated the EQC on SB 35 (2011). Ms. Thigpen reminded the EQC of the letter it had sent to DNRC requesting that rules be drafted (**EXHIBIT 9**) and said the DNRC sent correspondence stating that rules would be presented, although it contained no details.

03:34:12 Sen. Keane asked that EQC members be updated immediately regarding those rules.

03:34:31 Ms. Thigpen updated the EQC on cabin site litigation in which the legislature had been named in a lawsuit challenging SB 409 (2011).

EQC questions, discussion, and action, if any

03:37:03 Ms. Conradi requested electronic copies of the pleadings for the aforementioned cases.

Public Comment

None.

03:37:48 Mr. Kolman distributed materials generated by the Water Policy Interim Committee (WPIC) (**EXHIBIT 10**) and told the EQC of the WPIC's June 2012 road trip.

03:39:43 Sen. Hamlett requested the members of the EQC attend the exempt well meetings.

03:41:02 Sen. Brenden noted his dissatisfaction with the meetings' locations.

Public Comment on anything else

03:42:13 Cory Swanson, Citizens for Balanced Use, commented on DFWP's statewide bison management plan scoping process.

03:49:51 Sen. Keane said that bison would be addressed at future meetings of the EQC.

Other business

03:50:30 Sen. Hamlett addressed Sen. Brenden's concerns regarding meeting locations. Sen. Hamlett said WPIC's membership chose the locations based on its consideration of "closed basins" and assured Sen. Brenden that Eastern Montana's concerns would be addressed. Sen. Brenden agreed that one size does not fit all in regard to exempt wells.

03:52:01 Rep. McChesney asked Mr. Van Genderen about an issue involving photo permitting that had been raised by a citizen during the Council's visit to Lewis and Clark Caverns and asked if Montana would be better served by a simpler system. Mr. Van Genderen said there had been much internal discussion in that regard within the Division and that it had been agreed that it can be hard to discern casual from professional photographers. Mr. Van Genderen said he would follow-up on the issue at the EQC's next meeting.

03:58:21 Sen. Keane adjourned the EQC.

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