



Montana Board of Livestock Meeting Minutes

(This Meeting was Virtual)

April 23, 2020
Helena, Montana

Board Members Present

John Scully, Vice-Chair (cattle producer)
Lila Taylor (cattle producer)
Sue Brown (dairy and poultry)

Nina Baucus (cattle producer)
Brett DeBruycker (cattle producer)

(John Lehfeltdt was not present. Ed Waldner joined the meeting at 8:11 am)

Staff Present

Mike Honeycutt, EO
Brian Simonson, Deputy EO
Evan Waters, Centralized Services
Dan Olson, Centralized Services
George Edwards, Livestock Loss Board
Gary Hamel, Meat & Poultry Inspection

Donna Wilham, Adm. Assistant to EO
Dr. Marty Zaluski, State Veterinarian
Dr. Tahnee Szymanski, Animal Health
Dr. Eric Liska, Animal Health
Dr. Gregory Juda, MT VDL Director
Dr. Emily Kaleczyc, Meat & Poultry Inspection

Public Present

Rachel Cone, Montana Farm Bureau Federation
Jim Brown, Montana Woolgrowers Association
Jenny Bloomquist, Montana Veterinary Medical Association
Kyle Chenoweth, Legal Services Division
Rob Stutz, Legal Services Division
Montana Senator Bruce Gillespie
John Steuber, USDA-APHIS Wildlife Services

MEETING CALLED TO ORDER

8:02 AM

Vice-Chairman John Scully called the meeting to order at 8:02 AM

ROLL CALL

8:02 AM

John Scully requested a roll call of all BOL members present

- All BOL members were present except for John Lehfeldt and Ed Waldner

COMMENTS FROM THE PUBLIC ON NON-AGENDA ITEMS/COMMENTS FROM PRODUCER ORGANIZATIONS

8:03 AM

- John Scully requested an early public comment period because he said that there would be an Executive Session held at the end of the meeting
- There were no public comments given at the time

BOARD APPROVAL OF BOARD MINUTES AND ADMINISTRATIVE CONSENT ITEMS

8:03 AM

John Scully allowed the BOL to request removal of any of the Board Administrative Consent Items for discussion:

- John Scully requested removal of the Milk Control Bureau's Emergency Rulemaking report, the Veterinary Diagnostic Lab's CWD Testing Update report and the Equipment Loan for COVID-19 Testing report
- Lila Taylor requested the removal of the Veterinary Diagnostic Lab's Trich Testing Supply Limitations report and requested information from Livestock Loss Board (LLB) regarding payments to Reservation ranchers
- John Scully also pointed out that one of the two out-of-state travel requests from the Milk & Egg Bureau did not include a justification and requested that be filled in

MOTION/VOTE

8:06 AM

Nina Baucus moved to approve the minutes for the 2/27/20 BOL meeting and the 3/17/20 BOL conference call, the Bureau Report from the Milk & Egg Bureau and the two Out-of-State Travel Requests from the Milk & Egg Bureau. Lila Taylor seconded. The motion passed.

DISCUSSION OF BUREAU REPORTS PULLED FROM BOARD CONSENT AGENDA

8:08 AM

Per Lila Taylor's request, John Scully called on George Edwards to explain the LLB's suggested Legislative change in payments to ranchers operating on Tribal Reservations:

- Since the inception of the LLB's indemnity payment program back in 2007, no loss payments could be paid if the loss occurred on Tribal land and if that

particular Tribe had no signed agreement in place with the Department of Livestock

- George Edwards said the LLB is proposing that the Legislature allow livestock loss payments be able to be made directly to Tribal and non-Tribal ranchers on Tribal land, even if the Tribe does not have a signed agreement with the Department of Livestock (DOL)

The pulled report on Emergency Rulemaking by the Board of Milk Control Pertaining to Dumped Milk Relating to the COVID-19 Pandemic was discussed:

- John Scully said that per a question posed to them, he and Mike Honeycutt had discussed whose scope it was in to propose the emergency rule, the Board of Livestock or the Board of Milk Control
- In this case, the legal opinion was that the rulemaking authority is in the hands of the attached board and the Department has the obligation to disseminate, print and process those on their behalf

John Scully explained that the reason he had the Veterinary Diagnostic Lab's (VDL) CWD Testing Update pulled from the Consent Agenda was as a reminder of the Legislature's and Legislative Interim Committee's requests for the VDL to specifically deal with CWD Testing protocols:

- Mr. Scully said that Dr. Greg Juda said he would have some CWD testing protocols to report to the BOL before the VDL began CWD testing, which would probably be in May
- According to Mr. Scully, per the request of the last Legislative audit, the DOL had increased the amount of per capita funds contributed to the VDL, diminishing the general fund portion, but, with likely a majority of the CWD testing coming from non-traditional sources, the DOL will need to discuss whether VDL fee structures would carry forward and there needs to be a clear understanding of what is paid for by per capita monies in the VDL

Lila Taylor posed her questions regarding the removed Trich Testing Supply Limitations report:

- As of April 13th, Ms. Taylor was wondering if there had been a shortage or a stoppage of Trichomoniasis testing in some counties
- Dr. Greg Juda said that no test was missed, even though there had been a limitation on Trich test kits. He added that the problem had been completely alleviated in the last two weeks and that the VDL is set for next year

John Scully said that the reason he had removed the VDL Consent Agenda report titled "Assisted Public Health with Equipment Loan to Increase COVID-19 Testing" was because he thought it was important the public be aware of what took place:

- Mike Honeycutt said that the Governor's Office contacted the DOL because DPHHS was wondering if the VDL could perform COVID-19 testing
- Dr. Juda explained that DPHHS wanted to increase their testing footprint and had hoped the VDL could perform COVID-19 testing or lend them a piece of equipment to do so
- The VDL had the technical ability, expertise and equipment to do a very high input of COVID-19 testing, but did not have an active CLIA certification or the ability to operate under HIPAA laws to conduct testing on human subjects

- The piece of equipment requested by DPHHS was purchased by the MVDL on a Federal grant, so, after getting clearance through the National Animal Health Laboratory Network (NAHLN) to loan that piece of equipment, the MVDL was able to get it to DPHHS within 2-3 days and it is currently in their possession, being qualified for the COVID-19 testing, in accordance with CDC guidelines
- Mike Honeycutt reported that the DOL was in possession of 85 N95 masks and had given 70 of them to the Department of Emergency Services (DES)

OLD BUSINESS

8:23 AM

8:23 AM – UPDATE ON COVID-19 DEPARTMENT OF LIVESTOCK RESPONSE & CONTINUITY

Mike Honeycutt gave an update on the operations of the DOL relative to COVID-19, since the last official update had been given:

- There are still 9-10 people who continue to come to work in the Helena office on a daily basis and there are 30 or so who continue to work remotely
- Operations at the markets have gone on as normal as sales continue to be conducted, although it has been slower activity
- The Governor's latest Phase-In plan continues to call for telework where possible and, as of yet, he has not released people to come back into spaces
- CDC guidance regarding COVID-19 have been distributed to staff with updates as they have been given to the DOL
- Nina Baucus said she had sent a report to Mike Honeycutt and various BOL members regarding house cats contracting COVID-19 from their owner, and suggested that precautionary measures be taken by the veterinary community in the state

8:27 AM – UPDATE ON PLANNING & ACTIVITY FOR POTENTIAL NEW MVDL BUILDING

Dr. Gregory Juda reported that a webcast meeting had been held with the Architectural Committee for the proposed new MVDL on March 26-27:

- The reduced-size floor plan was discussed and the architects made an action item to test that plan against the net to gross assumptions that were in their model as an output
- Dr. Juda said he also provided new details, including the request to move forward with a full BSL3 necropsy space
- The architects said that their goal is targeting the May BOL meeting for approval of a building concept and then have the building design be largely completed by July 1, 2020 so that Marina Little can input the figures into the IBARS system
 - Brian Simonson said that the submission for inputs will be done in June, probably early June, rather than July 1
- John Scully expressed his concern for the short window of time to gather information for Legislative submission, due in November, and he requested that an abbreviated document be sent to the industry and veterinary professionals

prior to the BOL August meeting, listing what floor plan reduction size is agreed to and what the financial numbers would be

- Brian Simonson said that a report had been received from A&E on April 14, 2020, listing that through March 31, 2020, \$20,000 of the HB5 \$100,000 allocation had been expended

8:34 AM – UPDATE ON PER CAPITA FEE COLLECTION AND STAFF RESEARCH

8:34 AM – Non-Paying Per Capita Fee Equine Owner Draft Letter

Evan Waters reported on the DOL's work in combining equine owner lists to identify per capita non-payers and communicate with them:

- Three different DOL databases were combined to make one equine owner list of approximately 17,000 names to compare with the per capita payer list
- 30 DOL staff worked around 120 hours combined, to help pare down the list to about 5,400 names that had good addresses
- It was questioned whether or not to send a letter out, requesting equine owners pay per capita, considering what is going on economically
- It was expressed by more than one BOL member that they saw no problem in sending the per capita request letter out to equine owners, but it was added that when inspections are done, that a good address be gotten from the owner for input into DOL records

MOTION/VOTE

8:41 AM

Ed Waldner moved to send the per capita notice letter to the list of non-paying equine owners. Lila Taylor seconded. The motion passed.

John Scully said that he had asked Mike Honeycutt to look into the \$272,000 revenue gap between last year and this year in per capita revenue received:

- Mike Honeycutt reported that it did look like the DOL was down about 1,000 reporters on the cattle side compared to last year at this time and was hoping it was just a case of people missing their per capita reminder postcard and that they will pay their bill on the back end
- Evan Waters reported that total reported livestock reports are about 3,500 fewer than last year and for cattle it adds up to approximately \$275,000 less collected than at this time last year
- Mr. Waters did say though, that if previous per capita filers had not filed by May 1st, that DOR would be sending out bills to them
- Mike Honeycutt said, unless there is information he is not privy to, he does not believe the state has lost that many cattle or producers, but that the numbers are less because people just did not report
- Brett DeBruycker said he anticipates some serious banking issues this fall for producers and is expecting cattle numbers to start dropping within the next year

- John Scully said that when budgets come up in May, they need to be looked at to identify what per capita pays for and where
- It was suggested that when the DOR sends out the per capita bills, that a paper per capita reporting form be included in the mailing so producers can avoid having to go online, especially with some of the problems they were having with the DOR website

MOTION/VOTE

8:55 AM

Lila Taylor moved that a request be made to the Department of Revenue to include the per capita reporting form in the per capita bills they send. Brett DeBruycker seconded. The motion passed.

8:56 AM – BOL PARKING LOT AS OF APRIL 2020

Mike Honeycutt said many Parking Lot items were removed during the last meeting, and some would be removed during today's meeting, but, there were still a number of big-ticket items left on it such as Strategic Plan, IT Plan, working with industry regarding Market Law, and any other Brand Law that folks think should be looked at this Legislative session

- John Scully suggested that if anyone from the markets were on the call they would do themselves a favor by taking a look at current statutes and rules relative to electronic marketing

NEW BUSINESS

8:58 AM

8:58 AM – PROPOSED MCA CHANGES FOR 2021 LEGISLATIVE SESSION

John Scully announced that there would be no action taken until the May BOL meeting on the proposed MCA Changes for the 2021 Legislative Session or the EPP Priorities for 2021-2022:

- Mike Honeycutt assured the BOL that there is no rush to take action on these items as the deadline to submit items to OBPP is early June

9:01 AM – Animal Health Bureau

Revision to Indemnity Paid for Animals Destroyed Due to Disease (Title 81, Chapter 2, Part 2)/Making the Act of Garbage Feeding to Swine Illegal in Montana (Title 81, Chapter 5, Part 5)

- Language in the Indemnity rule is outdated, potentially limiting the DOL to \$100/animal maximum in most instances
- With the outbreak of African Swine Fever and vesicular diseases of swine transmitted in other areas of the world through improperly cured or prepared meat products, the Animal Health Bureau felt it was an appropriate time to transition Montana out of being a state that allows garbage feeding to swine

9:06 AM – Meat & Poultry Inspection Bureau

Regulate Custom Exempt Facilities as Required by the Federal Meat Inspection Act (MCA 81-9-218)/Remove Requirement that Chief Meat Inspector Be Appointed by BOL and Serve at its Pleasure (MCA 81-9-226)/Charge Fees for Inspection for Slaughter for Non-Amenable Species (MCA 81-9-229)/Update Definition of Livestock in MCA Title 81, Part 2 (MCA 81-9-217)

- Dr. Emily Kaleczyc said, that although the DOL currently oversees custom-exempt facilities, MCA 81-9-218 exempts them from DOL’s rulemaking authority. The proposed change would give the DOL the ability to write rules regulating custom exempt facilities, bringing MCA in line with current practice
- Dr. Kaleczyc said that it has not been current practice in recent history for the Chief Meat Inspector to be someone appointed by the BOL at their pleasure as stated in code, and so the requested change would bring MCA in line with current practice
- The definition of livestock listed in MCA 81-9-217 includes species not covered by the Federal Meat Inspection Act and the DOL cannot receive Federal cost-sharing funding for inspection of them. The proposed change to MCA 81-9-229 would give the DOL authority to charge inspection fees when they are not covered by the DOL’s Federal cooperative agreement
- The definition of livestock currently listed in MCA 81-9-217 would be changed to include only those species amenable to inspection under the Federal Meat Inspection Act (cattle, sheep, swine, goats and equine)

9:11 AM – Milk & Egg Bureau

Provide DOL Authority to Require a New License When a Currently-Licensed Facility Changes Ownership (MCA 81-21-102)/Retain Fees Collected by Milk & Egg Bureau for the Fluid Milk Program/Retain Fees Collected by Milk & Egg Bureau for the Shell Egg Programs (MCA 81-20-202)/Retain Fees Collected by Milk & Egg Bureau for the Manufactured Milk Products Program (MCA 81-22-208)

- Current law allows that if a licensed dairy facility changes ownership, the license automatically goes with it. The requested MCA change would require a new license when a facility changes ownership
 - The current maximum price for obtaining a license for those facilities is \$50

9:20 AM –RECESS

9:30 AM – RECONVENE

COMMENTS FROM THE PUBLIC ON NON-AGENDA ITEMS/COMMENTS FROM PRODUCER ORGANIZATIONS

9:31 AM

John Scully offered another request for public comment, but received none

NEW BUSINESS (Continued)

9:31 AM

9:31 AM – DEPARTMENT OF LIVESTOCK EPP PRIORITIES FOR 2021-2022

Mike Honeycutt said that there would be no action taken on the EPP Priorities being discussed at the meeting, as a more formative financial work session would be required to discuss them more deeply and to consider funding sources:

- Mr. Honeycutt said that the request regarding the DSA was listed on the agenda for later in the day
- Mr. Honeycutt reported that across the DOL, over the past few years, there has been an attempt made to move the owned fleet of vehicles to a leased fleet of vehicles

9:34 AM – Animal Health Bureau

- Dr. Szymanski said that the Animal Health Bureau is requesting three leased vehicles for the Bison Management crew and the Western Supervisor, who are currently in owned vehicles
- More vehicle requests from Dr. Szymanski were for two owned veterinary trucks, one for this biennium and one for next biennium. Veterinary trucks require that a veterinary box modification be made, and so the request, in this case, is to purchase owned rather than leased vehicles

9:35 AM – Milk & Egg Bureau

Mike Honeycutt said the request is for a Sanitarian vehicle replacement that currently is DOL owned and transition it to a DOL leased vehicle

9:38 AM – Meat & Poultry Inspection Bureau

Mike Honeycutt said that the Bureau is requesting funding for several staff trainings over the next biennium:

- The training for Public Health Veterinarian is a course for a veterinarian to become knowledgeable of FSIS criteria. Mr. Honeycutt believes the primary focus of the course is to train officials on control of zoonotic diseases moving from animals to humans or meat
 - If approved, this would be the first time Montana has sent someone to this training
 - There is currently a veterinarian who is part of the Meat & Poultry Bureau, Dr. Emily Kaleczyc, who would probably be the veterinarian sent to the course, if it is approved
- The Inspection Methods course, which focuses on essential knowledge for the inspection staff, and the Livestock Slaughter course, are necessary for Inspectors that do inspections and slaughter inspections

Mike Honeycutt explained the reasoning behind the FTE request for labeling:

- Currently, there is one staff person specifically dedicated to the labeling function, but there have been complaints about the ability to stay on top of that function and to do it in a timely manner

- The request is for the Bureau to add a .5 FTE to the labeling aspect of the Meat & Poultry Inspection program

9:45 AM – Veterinary Diagnostic Laboratory

Dr. Gregory Juda reported on the VDL's request for several pieces of equipment:

- There is a request for CWD-specific equipment that would be used for the histological assay slide preparation
- Due to new EPA regulations and the fact that MSU will no longer be able to do hazardous waste pick up, it is necessary to have an additional chemical waste disposal pickup done about twice a year for a cost of around \$5,000
- Although there are already a couple of NAHLN-funded thermocyclers at the MVDL, the request is that one DOL-owned thermocycler be purchased for the Molecular Diagnostic section to increase capacity, replace aging platforms and increase standing with the NAHLN rating system
- CWD IHC staining would not have to be done manually with the purchase of an auto-stainer for use in the Histology Lab section. This piece of equipment would be utilized on a daily basis
- Additional technical support is requested for the LIMS system on an annual basis. The funding for this, plus collaboration with the University of Illinois and the South Dakota Lab, would help get additional functionality out of the LIMS system
- An automatic dishwasher and auto bath in the Media Prep Lab section is considered a “nice to have” not “need to have” item request
- A slide label printer for use in the Histology section of the Lab would automate labeling of slides versus labeling them manually

9:53 AM – Centralized Services Division (CSD)/Brands Enforcement Division/Montana Veterinary Diagnostic Lab (MVDL)

Mike Honeycutt said that CSD and the Brands Enforcement Division requests were combined, just for the sake of this meeting, because there is currently no Brands Administrator and because the MVDL request that Brian Simonson compiled are also included in this section:

- The requests for In-House Counsel and a Public Information Officer were again requested for the DOL
- The request for a helicopter to be utilized in predator control is a big-ticket replacement item and that would be discussed in more detail during the Predator Control segment of the day's meeting
 - The numbers listed on the EPP request form are based on a September 2019 presentation made by John Steuber, USDA-APHIS Wildlife Services
- Capital computer replacement, particularly of hardware, was added to the EPP list
- The MVDL item listed is for the proposed new MVDL facilities
- The additional staff requested in the Brands Enforcement Division would cover rerecord activities. They are temporary staff, who would be maintained until rerecord is over in December 2021 and finish up by Spring of 2022

- John Scully reminded the BOL that there is going to have to be a pretty good grip on what's happening with per capita fee as they head into EPP

BRANDS ENFORCEMENT DIVISION

10:05 AM

10:05 AM – DISCUSSION AND DELIBERATIONS ON BRANDS ADMINISTRATOR CANDIDATE INTERVIEWS

John Scully explained the process gone through by the BOL to select the Brands Administrator position candidates who were interviewed the day before by the BOL:

- The vacant Brands Administrator position was put out for notice and resumes were accepted for a period of time
- The BOL selected a subcommittee (Lila Taylor, Nina Baucus and Sue Brown) to review the resumes and identify the candidates they would like to see interviewed. They selected three candidates
- The three candidates were interviewed on April 22, 2020, each answering a set of 10 questions, asked by the BOL, during an executive session of the BOL
- The public was notified before the interviews began, that if any action was taken after the interviews were completed, that the BOL would come back into full session. There was no action taken that day, and it was decided to discuss the interviews during today's BOL meeting
- Mr. Scully requested that the BOL go through their view of the previous day's interviews and identify a successful candidate, from their point of view
- If there was agreement by the BOL on a candidate, then Mike Honeycutt could engage that candidate for the position and report back to the BOL

The BOL were all in agreement that Ethan Wilfore was the top candidate to fill the vacant Brands Administrator position:

MOTION/VOTE

10:10 AM

Brett DeBruycker moved to extend an offer to Ethan Wilfore to fill the Brands Administrator position. Lila Taylor seconded. The motion passed.

10:21 AM – UPDATE AND PLANNING ON VACANT BRANDS POSITIONS

10:21 AM – Request to Fill Vacant Market Inspector Positions

Mike Honeycutt reported that there were currently four positions that were open or would be coming open in the Brands Enforcement Division and he was requesting the BOL approve filling those positions so that those persons could be trained prior to Fall Run:

- The Billings position became vacant when an employee did not make it through the probationary period satisfactorily
- In the Great Falls market area, a Market Inspector chose to go into ranch work

- The position in Ramsey came open through a retirement
- The Miles City Market Inspector position became vacant when an employee took employment outside of State government

MOTION/VOTE

10:23 AM

Lila Taylor moved to fill the four vacant Market Inspector positions in the Brands Enforcement Division, including positions in the Billings, Great Falls, Ramsey and Miles City markets. Nina Baucus seconded. The motion passed.

10:23 AM – Request to Fill Vacant Brands Compliance Position

Mike Honeycutt explained that the Market Auditor position had been filled in-house by an individual who had been working in a Brands Compliance position and now he was requesting that the BOL approve filling that vacant Brands Compliance position

MOTION/VOTE

10:24 AM

Lila Taylor moved to fill the vacant Brands Compliance position in the Brands Enforcement Division. Sue Brown seconded. The motion passed.

10:24 AM – RERECORD RULE CHANGE UPDATE

Mike Honeycutt reported that with the time about to expire on the public comment period to the Rerecord Rule (ARM 32.2.404), which included the fee change, no comments had been received

MOTION/VOTE

10:25 AM

Absent any public comments the BOL would need to respond to, Nina Baucus moved to approve the setting of the rerecord fee and changes made for the 2021 rerecord period in ARM 32.2.404, as previously discussed. Sue Brown seconded. The motion passed.

10:26 AM – CENTRALIZED SERVICE DIVISION REPORTS

10:26 AM – PREDATOR CONTROL

10:26 AM – Discuss Helicopter Purchase Options

John Steuber reported on his findings for locating a helicopter to replace the DOL's OH58:

- The OH58 helicopter, located in Billings, is LESO-owned and would have to be returned to the LESO (Law Enforcement Support Office) program if it is replaced, because it has been on loan to the DOL
- Mr. Steuber said he will write up a report for the BOL, listing the status of the DOL-owned helicopter, the Hughes 500, located in Helena, relative to its longevity and maintenance, but he feels that looking at its main, timed parts, its expensive parts (blades, engine overhaul, both hot sections and turbine), that helicopter should be okay for about a year or so more
- Mr. Steuber located a used Army Bell 206B-3 Helicopter that may be able to be purchased by the DOL for \$180,000, with a price for modifications of \$40,000 to \$90,000. Timeline for releasing those Army helicopters is mid- to late- 2021. Mr. Scully requested that Mr. Steuber write up a proposal for the May BOL meeting regarding the DOL purchase of the helicopter
- USDA Wildlife Services had already purchased 11 of these Army helicopters and had contracted with a company that is currently modifying them to be able to do the type of work that Wildlife Services does
- John Scully said that at this current time, the DOL does not have enough money for the helicopter purchase, but could look at the current predator control budget and per capita funds to see if the DOL would like to get authority to set aside \$25,000 to \$50,000 in the event the DOL decides to go ahead with the helicopter purchase

10:37 AM – ANIMAL HEALTH & FOOD SAFETY DIVISION REPORTS

10:37 AM – ANIMAL HEALTH BUREAU

10:37 AM – Proposed Rule Change ARM 32.3.433, Designated Surveillance Area (DSA)

Dr. Eric Liska reported that a meeting scheduled for the Ruby Mountains area in Twin Bridges had been changed instead, due to COVID-19, to an April 2, 2020 conference call, to discuss the proposed rule change in ARM 32.3.433, which would change the boundary of the DSA:

- About 20-30 people participated in the conference call, and because that was not as many as was hoped to participate, Dr. Liska said it was decided to call every producer in the area and talk to them personally, and he was about half-way through that process
- Dr. Liska said that in his producer phone calls, he asked them to start following regulations and request testing and voluntarily test their cattle when they take them to market or sell them
- A lot of pressure had been given to Montana from receiving states regarding changing the DSA boundary when two elk in the Ruby Mountains area were found to be positive for Brucellosis during an FWP elk capture held earlier this year

- The current DSA boundary runs from Ennis to Alder, and the recommended boundary change would follow HWY 287 West to Twin Bridges and travel SSW to Dillon on HWY 41
- The number of cattle affected by this boundary change would be around 25,000 from 66 producers
- In a hope to help prevent contracting Brucellosis from elk in cattle, hazing elk out of certain areas by using dogs or 4-wheelers, screaming or hollering or using cracker shells, even knocking down one or two females has been attempted with not much success because the elk just seem to return to the same area
- Spatial separation, by keeping cattle out of an area where there are a lot of elk during the risk period is a huge tool in the battle against Brucellosis, but, the risk period is a long one, running from mid-January until the end of June

MOTION/VOTE

10:48 AM

10:48 AM MOTION Nina Baucus moved to publish the proposed change to MCA 32.3.433, Designated Surveillance Area, which includes a DSA boundary change, as recommended by Dr. Eric Liska. Sue Brown seconded. The motion passed.

- John Scully requested that the map showing the proposed changes to the DSA boundary be published in the appropriate two news medias
- Because of pressure from Montana's export states, Dr. Liska asked, to accelerate regulation, if there was a process by which, when Brucellosis is found in the wildlife outside of the DSA, that the DOL could put out an official order to producers in those areas that would include them in DSA regulations until such time that official boundaries and regulations are developed
 - John Scully said that emergency rulemaking lasts for only 120 days
 - Dr. Liska said that in discussion with DOL legal counsel, he understood that rulemaking is more for eminent human health concerns, the order would be more for animal health concern and is not necessarily law as administrative rule is but that the DOL has the authority to enforce it
 - Mike Honeycutt said there is a possibility that because the DSA was dealt with from the beginning in the rulemaking process and has continued to deal with it that same way over time, rather than rolling it out as an order, the DOL may be blocked from issuing orders because that might be seen as circumventing the rulemaking process
- John Scully requested that Dr. Liska bring a proposal to the May BOL meeting regarding his request

10:57 AM – Select Agent Update

Dr. Eric Liska reported that he was excited about some possible changes in the USDA Select Agent Rule:

- Dr. Liska said that for years, Dr. Zaluski and Dr. Szymanski have worked to remove *Aboretus* from the USDA Select Agent List, which, if done, would open up opportunity for research on the disease
 - Because the disease is on the Select Agent List, any research on it is pre-empted
- Dr. Liska said that there is currently an opening for comments to be made to the CDC and USDA regarding removing *Brucella Aboretus Suis Melitensis* from the Select Agent List and that the DOL website includes information and links of where to make those comments
 - Deadline to make comments is May 18, 2020
- Information has been sent from the DOL to veterinarians and Dr. Liska said he has discussed the situation with some producers by phone. Also contacted have been other states and Dr. Zaluski has worked with USAHA officials regarding the removal of those agents from the list
- It was questioned what would happen to the funding from the Federal Government relative to Brucellosis management and activity if the disease was removed as a select agent
 - Dr. Liska said he thinks that as long as people care about the disease worldwide, there will always be a reason to fight it, and that internationally, the disease is a real issue. He feels that USDA will continue to fund the process

11:25 AM – Response to Comments on MAR Notice Number 32-19-304

Dr. Tahnee Szymanski was requesting BOL support to finalize proposed language revisions being discussed for rules pertaining to importation requirements in MAR Notice Number 32-19-304:

- The rulemaking process for the two rules, part of MAR Notice Number 32-19-304, began back in mid-2019 and were withheld and then brought back for a second rulemaking process with a more well-defined reasonable necessity statement. The proposed language revisions are in ARM 32.4.502, Importation of Restricted or Prohibited Alternative Livestock and in ARM 32.4.1309, Import Requirements for Cervids
- In ARM 32.4.1309, it was proposed to add a Section D that would say animals could not be imported from an area with confirmed cases of CWD in wildlife, but it is now proposed to not include that language and essentially leave that language identical to what it has been
- In ARM 32.4.502, it was proposed initially to say that animals could not be imported without an anti-mortem test for CWD and could not come from an area where CWD was endemic. Based on comments received, the language was modified to exclude the need for an anti-mortem test and to say that species susceptible to CWD may not be imported from a geographic area or alternative livestock premises where CWD is endemic or has been diagnosed within 50 miles within the previous five years. The county of origin must have a wildlife surveillance program that has been reviewed and approved by the State Veterinarian

- Dr. Marty Zaluski said that the Animal Health Bureau feels that this current language addresses the comments from the previous publishing, striking a balance between protecting the State of Montana, protecting producers and takes into account the variety of comments received
- Rob Stutz said that the rule must be adopted six months from the publication of the original rule, which would mean it would not expire until the end of May 2020
- Lila Taylor commented that she wanted to make sure that the BOL was careful about what they do to different industries in the state
- Nina Baucus felt that with so many people commenting on the rule that the changes made should go back out to the public again to give them an opportunity to review them to be sure they have been addressed in a manner they are comfortable with
- John Scully had requested any comments from the public regarding the proposed rule changes, and one person, Travis Lowe, texted Dr. Zaluski that he would like to comment. Mike Honeycutt suggested moving forward with another agenda item until Mr. Lowe was able to join the call

11:18 AM – Request to Hire Short Term Worker

Dr. Tahnee Szymanski detailed the Animal Health Bureau's request to hire a short-term worker in the Bison Management Program:

- The position is an aggregate temporary position that has existing approval and would help with hazing on the north side of Yellowstone National Park
- The position would be Federally-funded and that worker would be available to the DOL no more than 90 days
- The position is an existing FTE that had not been utilized for the past 3-4 years
- With two full-time DOL employees stationed on the north and west sides of Yellowstone National Park, the person in this position would be utilized as needed on hazing days
- Dr. Szymanski said that they are seeing very high numbers of bison outside of Yellowstone National Park, with approximately 270 on the north side and 150 on the west side that will be subject to haze back into the Park on May 1, 2020

MOTION/VOTE

11:19 AM

Sue Brown moved to hire a short-term worker to help in the Bison Management program in the Animal Health Bureau. Brett DeBruycker seconded. Nina Baucus was a nay. The motion passed.

Dr. Tahnee Szymanski reported that right on target with population control, approximately 800 bison were removed from Yellowstone National Park this year:

- The tally for hunted bison this year was approximately 240 animals
- The tally for trapped/captured bison this year was approximately 550 animals, 100 of which went into quarantine pens

**11:25 AM – Response to Comments on MAR Notice Number 32-19-304
(Continued)**

Travis Lowe, Executive Director of the North American Elk Breeder’s Association, shared his thoughts on the proposed language revisions being discussed for rules pertaining to importation requirements in MAR Notice Number 32-19-304:

- The two rules with proposed language revisions are in ARM 32.4.502, Importation of Restricted or Prohibited Alternative Livestock and in ARM 32.4.1309, Import Requirements for Cervids
- Mr. Lowe said that his Association had participated in the public comment process and also in discussions with the DOL regarding the proposed language changes for the past 11 months and they believe that the current revised language is good middle-ground language that satisfies the State’s concern but still allows their industry to engage in commerce
- According to Mr. Lowe, the revised approach is consistent with the approach taken in other states and so his Association supports the adoption of these changes as soon as possible

MOTION/VOTE

11:28 AM

Sue Brown moved to adopt the proposed rule change with revised language as discussed, in ARM 32.4.502, Importation of Restricted or Prohibited Alternative Livestock and in ARM 32.4.1309, Import Requirements for Cervids, both part of MAR Notice Number 32-19-304. Ed Waldner seconded. Lila Taylor, Sue Brown, Ed Waldner and Brett DeBruycker voted aye. Nina Baucus and John Scully opposed. The motion passed.

11:30 AM – MILK & EGG BUREAU

11:30 AM – Milk & Egg Bureau Staffing Update

Dr. Marty Zaluski reported on a conference call he had with three Milk & Egg Bureau employees to discuss workload since the retirement of Bureau Chief Dan Turcotte and Sanitarian Roy Hall at the end of December 2019:

- Milk & Egg Bureau employees participating in the call with Dr. Zaluski were Darcy Alm, Alex Dachs and Rosemary Hickey
- All three Milk & Egg Bureau employees felt there was insufficient workload to warrant the hiring of another sanitarian
 - Reasons for the decreased workload were the attrition of Montana’s dairy industry, uncertainty relating to what happens to dairy facilities due to the Dean Foods bankruptcy and concerns over further attrition because of COVID-19
- The FTEs in the Milk and Egg program will not be abandoned, but will be maintained, remaining vacant for a time due to environmental circumstances

- Dr. Zaluski requested that the BOL consider the possibility of moving a .5 FTE from the Milk & Egg program into the MVDL so that there would be two full FTEs in the Milk Lab rather than 1.5. John Scully requested that Dr. Zaluski bring data to support that request

11:35 AM – CENTRALIZED SERVICE DIVISION REPORTS (Continued)

11:35 AM – FISCAL BUREAU

11:35 AM – March 31, 2020 State Special Revenue Report

Brian Simonson gave updates on the latest State Special Revenue numbers as of March 31, 2020:

- The wolf mitigation fund has come up in number, with the advent of new licenses being issued, and saw nearly \$11,000 in donations in March
- Although Lab fees are still down, they made up ground by about \$10,000
 - Dr. Juda explained that the number would be flipping in relatively short order because the Animal Health Bureau had not yet been invoiced completely for Brucella testing as part of the surveillance program
 - Brian Simonson said that when that action is completed, there will be a \$100,000-\$120,000 jump in DSA lab revenue coming out of the DSA general fund
- Brian Simonson explained that along with per capita numbers showing late filers' fees from 2019, the current report only shows fees paid up to April 21, 2020, and there has been a huge uptick in per capita payments in the last 21 days

11:40 AM – April 2020 Through June 2020 Expenditure Projections

Brian Simonson reported that for the expense projections, the DOL is continuing to see the year-long trend for FY2020 for increasing fund balance at the bottom of it:

- Another \$120,000 has been gained since the last reporting period
- There is \$800,000 expected of underspending of the projected budget
- Most of the overtime reported appears to be in the Meat and Poultry Inspection Bureau due to the extra work done by personnel because of several vacancies
 - There is going to be an uptick in overtime because of the cap that was applied to comp time hours accrued
- It was requested that Brian Simonson check into the \$45,000 over-spending in the travel budget
- There was a large increase this month in per capita fee, with half of it coming from Brands personnel and a third of it coming from vacancies in the MVDL
 - Brian Simonson explained that relative to saving per capita fee in the budget, 60% of it is coming from Brands personnel and operations; 30% of it is coming from CSD operations and 10% of it is coming from the MVDL
 - Mr. Simonson further explained that of the \$4 million budget in the Brands Enforcement Division, that is split basically $\frac{3}{4}$ into Brands fees and $\frac{1}{4}$ into per capita fee

- It was requested that Mr. Simonson look into the overspending in the Import Office budget, which he suspected was generated from legal fees
- The BOL discussed possible compensation of Mike Honeycutt for having taken over the review of the Brands Enforcement Division during the search for a Brands Administrator
 - To date, Mr. Honeycutt had not been compensated for the extra duties
 - Mr. Honeycutt reported that historically, when people are asked to step down to cover areas below them, that is considered part of their managerial responsibilities

11:53 AM – March 31, 2020 Budget Status Report

Brian Simonson updated the BOL on the budget status of the DOL as of March 31, 2020:

- 66% of the budget year was lapsed with 65% of the budget expended
- Personnel expense comparisons were up about \$475,000 from this time last year, revealing fuller employment, plus payouts that were done
- Vacancies to date were about \$437,000
- Operations expense comparisons were up \$76,000, revealing increased activity for the year
- Because FWP had not yet been paid for elk collaring activity as it had been at this time last year, \$170,000, numbers were being driven differently. Mr. Simonson assured the BOL that the DOL had been staying along the same trajectory as last year for the past few months
- Mr. Scully pointed out that there appeared to be a budget issue with one of the attached boards, and if that was the case, their board should be notified of that issue

COMMENTS FROM THE PUBLIC ON NON-AGENDA ITEMS/COMMENTS FROM PRODUCER ORGANIZATIONS

11:56 PM

John Scully opened the floor to anybody who wanted to comment on non-agenda items, but did not receive any comments

LEGAL COUNSEL UPDATE

11:57 AM

11:57 PM – Discuss Research on Statutory Relationship Between MDOL and Attached Agencies

Kyle Chenoweth reported on his research regarding the relationship between departments and their attached boards:

- Montana statute MCA 2-15-121 basically states that the allocated administrative entity has four rights they can exercise outside the influence of the department
 - Quasi-Judicial Function

- Quasi-Judicial is similar to what is done at a BOL meeting where decisions are made on suggested cases and voting on things
 - Quasi-Legislative
 - Quasi-Legislative is more similar to rulemaking
 - Licensing
 - Policy Making
- According to MCA 2-15-121, the DOL and the BOL as the Department Head, have obligations to the attached boards
 - Supervise the budgeting, recordkeeping, reporting and related administrative and clerical functions
 - Include the entity's budgetary requests within the departmental budget
 - Mr. Chenoweth said that it is his conclusion that most of the budgeting will be happening within the four walls of the entity but, the budgeting process can be supervised and directed by the department
 - Collect revenues for the entities and deposit them into proper accounts
 - Provide staff for activities
 - Mr. Chenoweth said that he believes the department would hire, fire, do performance interviews and approve salaries, like an HR Department would do
 - The statute does allow for the attached entities to provide their own staff, but that would have to be passed by the Legislature
 - Print and disseminate the administrative rules and notices and other orders
 - The BOL, as the DOL head, has the obligation to represent the attached entities in any communications with the Governor and allocate office space to the entity
 - Mr. Chenoweth added that there isn't any talk about who within the department or entities talks with the Legislature and said that it might be more of an internal policy situation
- It was decided that the chairs of the respective attached agency boards should receive the paperwork brought to the BOL regarding attached agencies

12:09 PM – Discussion Regarding Masks Received from Hartland Colony

Nina Baucus explained how the masks came into the DOL's hands:

- With suppliers out of stock and the Meat & Poultry Bureau not in possession of masks for the Inspectors to wear as part of the protection from COVID-19, the Pork Producers contacted Hartland Colony in Havre for help
- The Colony made the masks and got them quickly into the hands of the DOL Meat Inspectors
- Ms. Baucus requested that a thank you for the masks be sent to Hartland Colony

MOTION/VOTE

12:10 PM

Nina Baucus moved to send a thank-you letter to the Hartland Colony for the masks they made for the DOL Meat Inspectors. Brett DeBruycker seconded. The motion passed.

Ed Waldner reported that Hutterite Colonies had made and donated many masks and also donated sets of disposable coveralls to hospitals

12:12 PM – Litigation Update

Rob Stutz said he was open to answer any questions, but that the only item he had specifically prepared was to discuss litigation strategy regarding K&C Foods:

- Mr. Stutz said he had been significantly involved in the Board of Milk Control emergency rulemaking because of COVID-19
- John Scully moved for the BOL to go into Executive Session to discuss litigation strategies

12:17 PM – EXECUTIVE SESSION

12:28 PM – RECONVENE

John Scully explained that the BOL had been in Executive Session to discuss the recommendation with legal counsel regarding K&C Meats to dismiss the action filed previously in District Court

MOTION/VOTE

12:29 PM

Nina Baucus moved to accept the recommendation of legal counsel and move forward to dismiss the K&C Meats lawsuit. Brett DeBruycker seconded. The motion passed.

SET DATE FOR THE NEXT BOARD MEETING/REQUEST FOR ADJOURNMENT

12:29 PM

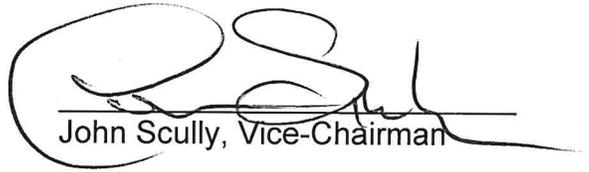
No date was decided upon by the BOL for its next meeting, but it was decided that there would be a meeting held in May, probably during the second or third week

MOTION/VOTE

12:30 PM

Ed Waldner moved to adjourn the meeting. Sue Brown seconded. The motion passed.

MEETING ADJOURNED
12:30 PM



John Scully, Vice-Chairman