



# Montana Board of Livestock Meeting Minutes

**(This Meeting was Virtual for the Public)**

June 23, 2020

MT Department of Livestock Board Room #319  
301 N. Roberts, Helena, Montana

## Board Members Present

Brett DeBruycker, Chairman (cattle producer)    Nina Baucus (cattle producer)  
Lila Taylor (cattle producer)    Wendy Palmer (cattle producer)  
Sue Brown (dairy and poultry)    Gilles Stockton (sheep producer)

**(Ed Waldner was not present. Gilles Stockton arrived at 8:18 am)**

## Staff Present

Mike Honeycutt, EO    Dr. Marty Zaluski, State Veterinarian  
Donna Wilham, Adm. Assistant to EO    Dr. Tahnee Szymanski, Animal Health  
Evan Waters, Centralized Services    Dr. Gregory Juda, MT VDL Director  
Dan Olson, Centralized Services    George Edwards, Livestock Loss Board  
Chad Lee, Milk Control Board    Gary Hamel, Meat & Poultry Inspection  
Ethan Wilfore, Brands Administrator    Dr. Emily Kaleczyc, Meat & Poultry  
Inspection

## Public Present

Rachel Cone, Montana Farm Bureau Federation  
Jay Bodner, Montana Stockgrowers Association  
Jim Brown, Montana Woolgrowers Association  
Taylor Brown, Northern Ag Network  
Rob Stutz, Legal Services Division  
John Steuber, USDA-APHIS Wildlife Services  
Travis Lowe, NAEBA

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## MEETING CALLED TO ORDER

**8:03 AM**

Chairman Brett DeBruycker called the meeting to order at 8:03 AM

## BOARD APPROVAL OF ADMINISTRATIVE CONSENT AGENDA ITEMS

**8:04 AM**

After discussion by the BOL, it was decided to remove all Bureau Reports from the Consent Item Agenda to be discussed during their perspective Bureau presentation at the day's meeting

## **BOARD APPROVAL OF BOL MEETING MINUTES**

**8:14 AM**

It was requested by Mike Honeycutt that the Chairman do a roll call vote during future virtual meetings to assure that all votes are registered correctly in the minutes

## **MOTION/VOTE**

**8:14 AM**

**Nina Baucus moved to approve the second set of minutes that were sent to the BOL, for the May 20-21, 2020 BOL meeting. Sue Brown seconded. The motion passed.**

## **NEW BUSINESS**

**8:15 AM**

### **8:16 AM – RECOGNITION AND THANK YOU FOR JOHN SCULLY'S SERVICE TO THE DEPARTMENT OF LIVESTOCK**

Brett DeBruycker reported that he had a nice discussion and lunch with John Scully about two weeks previous:

- Mr. DeBruycker expressed his appreciation of the work that Mr. Scully had done for the Board of Livestock, serving on the Board and as Board Chair for a number of years
- Nina Baucus said that Mr. Scully's leadership helped the BOL in legal aspects and that he gave his time freely, not accepting per diem for the many trips he made to Helena
- Lila Taylor thanked Mr. Scully for his service to the Legislature and mentioned the amount of time he had spent talking with legislators, working hard for the industry through the BOL

### **8:18 AM – WELCOME AND INTRODUCTION OF NEW BOL MEMBERS**

Brett DeBruycker requested a roll call of all BOL Members, including their name and position on the BOL and also of Mike Honeycutt, as a part of welcoming the two new BOL Members:

- New BOL Members welcomed were
- Gilles Stockton from Grass Range, the new Sheep Representative
- Wendy Palmer from Raynesford, the new Cattle Representative

## **OLD BUSINESS**

**8:21 AM**

**8:21 AM – UPDATE ON COVID-19 DEPARTMENT OF LIVESTOCK RESPONSE & CONTINUITY**

Mike Honeycutt reported that compared to when the COVID-19 situation first hit, the pace of life at the DOL had seemed to slow down:

- The DOL had, at the beginning of the COVID-19 situation, had to deal with the prospect of dumping milk, the prospect of euthanizing stock and how to get product donated to avoid waste and to do that within existing statutes
- 75%-80% of the Helena staff is still working remotely, with enough staffing in Brands to be able to deal with any walk-in traffic there
  - Most of the remote staff in Brands are Compliance Techs, but the Division Administrator, Office Administrator and Brand Recorder are on site at the Helena office
- Meat Inspectors, District Livestock Crime Investigators, Market Supervisors and Market Inspectors have been on-call and doing their duties throughout the entire COVID-19 situation
- Mr. Honeycutt welcomed feedback from anyone who had heard of challenges people may have had with the DOL during this COVID-19 situation with obtaining import certificates or those types of services from staff working remotely
- Mr. Honeycutt reported that Brands staff and other partners are meeting once a week, moving the rerecord plan forward, and he is confident that rerecord is covered
- It is expected that there will continue to be some walk-in traffic during rerecord, but Mr. Honeycutt said that during that time, extra signage will be posted at the security door for those people to get service
- Traffic during rerecord should be much less because the audit finding regarding timing of applications means that whether someone comes to the Brands office in-person or not with their brand application, it will still be dealt with in the order received

**8:31 AM – UPDATE ON PLANNING & ACTIVITY FOR POTENTIAL NEW MVDL BUILDING**

Mike Honeycutt reported that there had been no activity on the HB661 Committee, the one assigned to work on the proposed Lab, and that he had not seen a meeting scheduled for them anytime soon:

- The last time the VDL was discussed in front of the Legislature had been several weeks ago at an Environmental Quality Council (EQC) meeting, where most of the focus of interest was regarding CWD testing. Nina Baucus was the BOL member who attended that meeting virtually
  - Ms. Baucus reported on the CWD segment of the EQC meeting, with findings from different doctors dealing with the disease, from various labs, including the Rocky Mountain Lab in Hamilton, MT and the University of Alberta
  - Ms. Baucus said that Ken McDonald from MT FWP reported on the high percentage of deer that are road kills test positive for CWD

- There is a lot of back and forth regarding CWD prions and their longevity in soil that was discussed, according to Ms. Baucus
- Mr. Honeycutt reported that during an update at that EQC meeting from the HB661 Committee, it seemed they were unaware of the DOL activities to move things forward on the proposed new Lab and that they were having difficulty getting funding and willing partners for a combined lab complex
- Because the HB661 Committee had not been meeting, the DOL had not had the opportunity to present potential funding solutions and plans that staff had been working on that could be executed into a Long-Range Building Plan for the proposed new Lab. Mr. Honeycutt stressed the importance of making sure that those people who have been strong partners and proponents at the Legislature know what things the DOL is moving forward
  - The HB661 Committee and Jim Keane, Chair of the EQC Committee did express the desire to see the proposed new Lab funding information that the DOL staff had put together
  - It was reported that the HB661 Committee was not aware that the potential partners for the proposed new Lab were no longer interested in being a part of that Lab, except for the DOL
  - Mr. Honeycutt expressed hope that the DOL would be able to present to Legislative Interim Committees regarding the DOL's plan to move forward with the proposed new Lab before the 2021 Legislative Session. It was requested by Brett DeBruycker that a letter be sent to the Chairs of those Committees and their staff the DOL's desire to get on their agenda and share the information
  - The DOL has had conversations with MT FWP regarding their concerns if the MVDL location would no longer be in close proximity to them, because of their ability to utilize the MVDL's incinerator and also easy access for providing specimens to be tested
- Mr. Honeycutt said that DOL plans that have been executed so far for the proposed new Lab would flow into other partners' plans, such as the Department of Agriculture, FWP, MSU Extension and others, if they would decide to be a part of a new Lab complex
- During the Legislative Fiscal Division's time this year spent at the DOL gathering information to prepare an analysis report, Mr. Honeycutt said he spoke with Fiscal Analyst Rob Miller and suggested that he spend some time at the MVDL so he has some context when he hears things the DOL or Legislators say about it
- A brief history was given to the new BOL members of the proposed new Lab, which had been presented in a "Cadillac" plan by the Legislature two sessions ago and now has been scaled down because of lack of other agency support
  - Dr. Greg Juda and Dr. Steve Smith, both staff working at the MVDL, have been technical staff working with the architects on the design of the proposed new Lab. Other staff, including Brian Simonson and Evan Waters have been working on its finance options.

- The goal is that the plans that continue to come together for the proposed new Lab be put into the Long-Range Building Plan, an executive and legislative process for big infrastructure projects for the State of Montana
- With Brian Simonson on vacation, Mike Honeycutt did not have exact figures for how much of the \$100,000 Legislative allocated funds had been utilized so far for architectural plans for the proposed new Lab, but said that some had been spent because work had been done
- With both the technical and financial information having come together, the DOL is moving towards a visual rendering of the proposed new Lab from the architects
- Mr. Honeycutt said that he believes the HB661 Committee got stuck with moving forward with a combined lab complex when there was no appropriation given for architectural designs and renderings

Funding scenarios were discussed for the proposed new Lab with a hope that action could be taken by the BOL so that the MVDL proposal could be presented to the Long-Range Building Planning Committee by the July 1, 2020 deadline:

- Funding scenarios for the proposed new Lab would utilize either per capita fees or general fund or a combination of both
- Mike Honeycutt reported that he had discussion with legal counsel and the Office of Budget and Program Planning (OBPP) regarding the use of per capita funds to help fund the proposed new Lab
  - OBPP said that VDL operations are already funded at 30%-40% with per capita funds and that it would make sense that any capital purchase would be eligible for per capita expense, but left the caveat that he ask legal counsel
  - Mr. Honeycutt said that Rob Stutz, DOL legal counsel, told him that per capita fee, in the enforcement of livestock law, there is a law saying that the DOL could have a VDL and so it would be eligible for per capita expense
- Brett DeBruycker said that Federal funding for the proposed new Lab could still be sought out in the future, but he did not want to miss the window to submit a funding scenario for this upcoming Legislative Session
  - Mr. Honeycutt said that the DOL has had conversations with all members or staff of our Congressional delegation and that they had all committed to look for funding opportunities for the proposed new Lab
- Mr. Honeycutt said that if there is an increased interest by hunters to test their animals for CWD, that could possibly help offset utilizing as much per capita funds
- Jay Bodner, MSGA, voiced his appreciation for Mike Honeycutt and Brian Simonson joining their organization's board meeting and said that while their policies strongly support utilization of general fund dollars, they will be supportive of whatever funding the DOL chooses for the proposed new Lab
- Rachel Cone, MFBB expressed their organization's appreciation of Mike and the team coming to their board meeting and said that the MFBB supports the 50-50 funding scenario for the proposed new Lab
- Brett DeBruycker said he had discussions with MFU and that Walt Schweitzer, President of MFU, had expressed nothing but positive comments about the

proposed new Lab and is confident that MFU would be on board with what the BOL decides

- Gilles Stockton said that the Cattlemen's Association had not had a chance to discuss the issue as a board, but he felt they recognize the importance of the proposed new Lab

## **MOTION/VOTE**

### **9:12 AM**

**Lila Taylor moved to move forward with the 50/50 funding scenario (utilizing 50% general fund and 50% per capita funds) to submit to the Long-Range Building Committee for the proposed new lab. Sue Brown seconded. The motion passed.**

### **9:24 AM – PROPOSED MCA CHANGES FOR 2021 LEGISLATIVE SESSION**

The BOL discussed further some proposed MCA changes that had been tabled at the last BOL meeting to decide whether or not they would present them to the Legislature at the 2021 Session

### **9:24 AM – Revision to Indemnity Paid for Animals Destroyed Due to Disease**

This revision would be to Title 81, Chapter 2, Part 2, and would update the process by which the DOL would pay for animals destroyed due to disease and create an indemnity fund to be utilized for the claims:

- The proposed indemnity fund would allow the DOL to set aside \$10,000 and up to \$100,000 per year to help producers offset loss of cattle, sheep, goats, poultry and alternative livestock due to disease. This fund would be in addition to Federal funds to help facilitate those rates paid to producers
- Dr. Tahnee Szymanski said that horses were not on the list for the proposed indemnity fund payment and that on the Federal model, they do not pay indemnity on equine species, but a cap could be put on equine values if they were to be added to the list, because those individual values could be quite significant
- Mr. Honeycutt reported that in Texas there are herds infected with Tuberculosis for years because the producer and USDA were not able to come to an agreement for depopulation and he does not want that scenario to happen in Montana. He feels that this requested indemnity fund would help better negotiate a solution
- Currently, USDA does not pay indemnity for Brucellosis, but those losses are entirely born by the producer short of a \$250 diagnostic fee
  - Dr. Szymanski reported that Federal law does not allow payment to a producer for animals that are lost due to required Tuberculosis or Brucellosis testing
  - Dr. Szymanski said that producers may not be able to continue to rely on the availability of Federal funds and said that this requested fund would give producers something at the State level to fall back on

- Dr. Tahnee Szymanski reported that existing laws on the books in Montana limit indemnity fees to \$100 for a purebred animal and \$50 for a grade animal and specifies that a certain portion of that is to be paid by the county
- Jay Bodner, MSGA, suggested that because the proposed indemnity fund is utilizing per capita fees to fund it, that those utilizing that fund should have paid their per capita fees
- Dr. Szymanski said that if the proposed indemnity fund were approved as a change to MCA by the Legislature, the DOL's next step would be to write some administrative rules to clarify the law and how appraisals are done
- Dr. Zaluski said that he believes Federal regulations contain a provision saying any indemnity paid by the State does deduct from the Federal indemnity payment to prevent double-dipping
- Based on the low rate of Brucellosis infections and early detection, Dr. Zaluski said that currently, there are fewer than two or three animals per year that would potentially be lined up for payments from the proposed indemnity fund
- If poultry were included in the eligibility for the proposed indemnity payments, the potential payout does expand, based on the risk of Avian Influenza and other diseases and their unpredictability

## **MOTION/VOTE**

**9:49 AM**

**Nina Baucus moved to revise Title 81, Chapter 2, Part 2, the Indemnity Paid for Animals Destroyed Due to Disease, for presentation to the 2021 Legislature for their consideration, as presented by Dr. Tahnee Szymanski, with the addition that those claiming indemnity payments must prove that they have paid per capita for presentation. Lila Taylor seconded. The motion passed.**

## **9:54 AM – Revision to Title 81, Chapter 5, Part 5 of Making the Act of Garbage Feeding to Swine Illegal in Montana**

- Current Montana law states that garbage feeding in the state of Montana is illegal unless you are licensed with the State of Montana
  - Garbage is currently defined as waste resulting from the handling preparation, cooking and consumption of animal products, including animal carcasses or parts of carcasses or other refuse of any character that has been associated with animal products, including animal carcasses or parts
  - With the discussions at last month's BOL meeting regarding the revision, Dr. Tahnee Szymanski said that the definition of garbage was changed and does now not include pasteurized milk products or rendered animal products
  - Existing language, according to Dr. Szymanski, says that this does not apply to a person who feeds only the person's own household garbage to swine or other animals, which means those swine would not be able to be sold to someone else if fed garbage

- The request is to remove the ability for someone to become licensed to feed garbage to swine
  - Currently, there is no one licensed to feed garbage to swine in the state of Montana
  - Dr. Szymanski reported that there are 23 other states that prohibit the feeding of garbage
- The rationale for the request is that improperly cooked garbage can spread diseases, such as Foot & Mouth Disease or African Swine Fever
- The existing language says that garbage from airplanes cannot be fed to swine, recognizing that source of garbage is likely to contain garbage from international sources
- Mike Honeycutt said that he does not know how the law would be enforced, because of the limitations of the DOL staff

## **MOTION/VOTE**

**10:15 AM**

**Sue Brown moved to revise Title 81, Chapter 5, Part 5, Treatment of Garbage Fed to Swine, as presented by Dr. Tahnee Szymanski, with the removal of #2 in 81-2-502, for presentation to the 2021 Legislature for their consideration. Wendy Palmer seconded. Gilles Stockton voted No. The motion passed.**

**10:17 AM –RECESS**

**10:30 AM – RECONVENE**

## **BRANDS ENFORCEMENT DIVISION**

**10:31 AM**

### **10:31 AM – WELCOME AND INTRODUCTION OF ETHAN WILFORE, BRANDS ADMINISTRATOR**

Brett DeBruycker requested that Ethan Wilfore, the newly hired Brands Administrator, introduce himself:

- Ethan Wilfore was originally from Great Falls, Montana and attended the University of Montana. He spent some time in the military and he and his wife lived in Fort Carson, Colorado before taking this position

### **10:32 AM – Fort Supply Maintenance Agreement Renewal**

Ethan Wilfore requested that the BOL agree to renew the Fort Supply Maintenance contract, which had expired at the end of March:

- Fort Supply is a software and hardware vendor for IT equipment and is the system that had been used by the DOL to enter and capture brand inspection, market inspection and sale data for the past 6-7 years

- Part of the hardware of the Fort Supply system is a durable handheld device called an Archer, that is used by the Market Inspector at the market to check cattle. The DOL owns the Archers

## **MOTION/VOTE**

**10:35 AM**

**Lila Taylor moved to renew the Fort Supply maintenance agreement as presented, for another year. Nina Baucus seconded. The motion passed.**

### **10:39 AM – Discussion and Decision on Livestock Crime Investigator Pay**

Mike Honeycutt explained the reasoning behind the DOL's request to increase the pay of the Livestock Crime Investigators:

- Mr. Honeycutt reported that the Livestock Crime Investigators had approached the BOL on several occasions to talk about their pay and position description
- There is a growing discrepancy between the Livestock Crime Investigator pay and other State Law Enforcement personnel, including sheriff's departments and town police, and Mr. Honeycutt expressed his concern about market competitiveness for being able to hire law enforcement personnel
- Another discrepancy reported by Mr. Honeycutt is that when pay for Market Supervisors was adjusted to market rate, their salary moved ahead of that of the Livestock Crime Investigators by \$1.08/hour
- If the increase was agreed on by the BOL, the pay for 14 of the Livestock Crime Investigators would move to \$22.91/hour, a total increase in costs for the DOL of \$37,779
- Even at the \$22.91 base rate of pay for Livestock Crime Investigators, that is still about the rate a new Highway Patrol officer gets paid when they begin their probationary period
- Because of the July 14<sup>th</sup> snapshot, Mr. Honeycutt was hoping a decision on the increased salaries could be made right away because if not, it won't be able to be done for two years

## **MOTION/VOTE**

**10:46 AM**

**Lila Taylor moved to increase the Livestock Crime Investigator pay by \$1.08/ hour for the 14 Livestock Crime Investigators as discussed by Mike Honeycutt. Wendy Palmer seconded. The motion passed.**

### **10:57 AM – Update and Planning on Vacant/Recently-Filled Brands Positions**

Ethan Wilfore gave an update on the Brands Enforcement Division's vacant and recently-filled positions:

- Progress on Vacant Market Inspector Positions

- A conditional offer had been made and accepted for the vacant Great Falls position and it is pending a background investigation
- A conditional offer has been made and accepted for the vacant BLS position, and it is pending a background investigation
- Ty Thomas will be conducting an interview on June 24<sup>th</sup> with a candidate for the Miles City Market
- An interview had been scheduled two weeks previous with a candidate for the vacant position in Ramsey, but that candidate did not show up for the interview. That position has been reopened
- Progress on Vacant Brands Compliance Position
  - Julie Nilges filled the vacant Brands Compliance Technician position and started on June 8<sup>th</sup>. Mr. Wilfore reported that she is doing a great job, having hit the ground running
- Progress on Vacant Glasgow District Position
  - Ethan Wilfore reported that roughly 12 candidates applied for the vacant Glasgow position, but through screening, that list had been whittled down to three candidates. Interviews are scheduled for July 8<sup>th</sup>
- Progress on Western Region Supervisor Position
  - Currently, there are four candidates for the Western Region Supervisor Position, one that is split between both the Brands Enforcement Division and the Animal Health Division
  - Mr. Honeycutt said that the candidates had been in place for a while, but the DOL was waiting for Ethan Wilfore to step into the Brands Administrator position so he could be part of the selection process

## **11:03 AM – LEGAL COUNSEL UPDATE**

### **11:03 AM – Legal Update from BOL Counsel, Rob Stutz**

Rob Stutz reported that his legal activities in the past month had mainly been concentrated in the Brands Enforcement Division:

- Mr. Stutz's meetings had been with Ethan Wilfore, Cally Goyins and Kim Dallas
- Mike Honeycutt reported that there have been complication arise in the Brands Enforcement Division, many of which occur because of outdated law and rules, especially in the transfer of ownership of some brands

### **11:07 AM – Per Capita Fee as Source for Capital Expenditures (i.e. MVDL)**

Mike Honeycutt said that because of an action made by the BOL that morning, that he had presented overarching research on the use of per capita fees for capital expenditures and requested that Rob Stutz give further detail on the subject:

- Mr. Stutz said that he felt confident in the language of the statute, but also that the Legislative Audit Division had taken the same position in their interpretation of it
- In a Legislative audit of the MVDL, conducted in May 2016 it said that per capita fee should be used in the operations of the Lab and everything that goes with it and recommended that the DOL should develop a timeline and process for

building a new MVDL recommended that it was appropriate to use per capita funds on the MVDL

- Nina Baucus requested the written legal recommendation regarding utilization of per capita funds to build the proposed new Lab

### **11:13 AM – Discussion on Bison Hazing Litigation**

When a preliminary injunction was sought against the Governor's Office against hazing bison, it was reported by Mike Honeycutt that Dr. Marty Zaluski had been asked to attest to what the DOL does when moving bison around Yellowstone National Park from zones where they are not supposed to be to zones where they are allowed to be

## **11:16 AM – CENTRALIZED SERVICES DIVISION REPORTS**

### **11:16 AM – LIVESTOCK LOSS BOARD**

#### **11:16 AM – Livestock Loss Board (LLB) Overview**

George Edwards introduced himself and gave an overview for the new BOL members of the Livestock Loss Board:

- Mr. Edwards explained that the LLB is an agency attached to the DOL, but as a quasi-judicial board, their actions are independent of the agency
- The LLB pays claims for livestock losses due to wolves, grizzly bears and mountain lions in the state of Montana only after an investigation of the depredation has been done by USDA Wildlife Services
- Values for claims paid, according to Mr. Edwards are determined primarily through USDA market reports out of Billings

#### **11:18 AM – General Claims Numbers Update**

George Edwards reported on depredation claims paid since the last BOL meeting:

- Mr. Edwards said that when he submitted this BOL meeting's claims paid report, it showed 59 head, had been paid for, but that 4 more head had been paid for since last week
  - Mr. Edwards reported that there had been only two claimants so far this year that had not paid their per capita, an eligibility requirement of receiving depredation payments from the LLB
- Mr. Edwards reported that the LLB is accepting applications for loss prevention grants up until June 30<sup>th</sup>, and said that \$80,000 is available for wolf-only prevention projects with some money available for grizzly-bear-only prevention projects, but that dollar amount will not be known until the close of the fiscal year
  - Mr. Edwards said that the Legislature has appropriated \$300,000 annually in general fund monies to LLB for loss payments and that any money in excess of that money rolls into a loss prevention fund and he is currently estimating \$70,000-\$80,000 will be available, especially after having receiving \$30,000 in Federal funding to offset wolf-loss payments

- The LLB will be moving back to their former office at 1225 8<sup>th</sup> Avenue around the end of July or first week of August, as they need to be out of their current office location by August 1<sup>st</sup>

### **11:24 AM – PREDATOR CONTROL**

Mike Honeycutt followed up on the last BOL meeting, reporting that the DOL did submit a letter of intent to maybe purchase a used surplus Army helicopter:

- The BOL did approve funding at the last BOL meeting to purchase one of the surplus helicopters with a retrofit to be done by USDA Wildlife Services, but would be waiting to see if the Legislature approves the funding
- The DOL currently uses two helicopters, one clearly owned by the DOL and the other acquired through a law enforcement surplus program that must be turned back into the program once it is retired by the DOL
- Mr. Honeycutt explained to the new BOL members that there is a statutory appropriation of a minimum of \$350,000 per capita fee be dedicated for predator control and that a cooperative agreement is made with USDA Wildlife Services to perform those services. It is employees of John Steuber, State Director of USDA Wildlife Services, who fly those two helicopters for the DOL

### **11:29 AM – Update on Activities of USDA Wildlife Services**

- Mr. Steuber reported that flying time for calves gotten by coyotes had slowed down, but had continued for sheep
- Wolf flying was currently going on, according to Mr. Steuber, but he said that grizzly bear depredations has picked up, starting in March rather than the usual April time period
- 80 grizzly bear depredation investigations had already occurred on private land in Montana with more on the Blackfoot Reservation – 44 calves, 18 adult cattle, 9 adult sheep, 5 lambs, 4 goats and some pigs; 12 calves and one horse are probables
- With grizzly bear work funding from US Fish & Wildlife Service, Mr. Steuber reported that they were able to hire two new Seasonal Specialists, one on the Rocky Mountain Front and one in Madison County to help in the Gravelly Range, which is one of the highest conflict areas
- Mr. Steuber said there was Range Rider funding provided and they have one stationed in the Kootenai National Forest and one in the Gravelly Range
- Mr. Steuber reported that despite recent litigation issues, there was a settlement and that overall, USDA Wildlife Services will continue doing their predator work with some limitations

### **11:34 AM – MILK CONTROL BUREAU**

#### **11:16 AM – Milk Control Bureau and Board of Milk Control Overview**

Chad Lee introduced himself and gave an overview for the new BOL members of the Milk Control Bureau and Milk Control Board:

- Mr. Lee said that he has worked for the Milk Control Bureau for six years, a Bureau that carries out the day-to-day work of milk market regulations for the Board of Milk Control, a quasi-judicial board that is administratively attached to the DOL
- The Milk Control Bureau has two employees, including himself and the Board of Milk Control has five members who are appointed by the Governor
- The Board of Milk Control meets at least once a year, and by statute, sets the annual rates for the milk control assessment
- The Board had a major study of Montana's milk market regulations performed in FY2018 and as a result of recommendations from that study increased Montana producers' prices by about 4%, compared to what it would have been with the old formulas
- Currently in Montana, there are 46 pool dairies and 4 pool milk plants; there are two producer distributors and once ice cream plant that is stand-alone and two small cheese plants. The number of milk producers is only about 1/3 of what it was 20 years ago

#### **11:42 AM – Milk Control Bureau Update**

Chad Lee gave an update on the Dean Foods bankruptcy:

- On June 8<sup>th</sup>, the Dean Foods estate paid the Meadow Gold producers for the balance that was owed to them, approximately \$1 million for April 2020 production
- On June 8<sup>th</sup>, the Dean Foods estate paid the DOL for the milk control assessment and milk inspection assessment that had been withheld from the producers' April 2020 payments, but still owes the DOL about \$41,000
- Dean Dairy, LLC is the name of the entity created when Dairy Farmers of America (DFA) purchased select Dean Foods plants and distribution system, which included both Montana plants in Great Falls and Billings. Start date for that was May 1, 2020
- 

Chad Lee reported that earlier in June, there was a meeting with the Legislative Audit Division regarding a possible performance audit:

- A ZOOM meeting involving Board of Milk Control Chair Scott Mitchell, Mike Honeycutt, Brian Simonson, Chad Lee and two Legislative Audit Division auditors was held to discuss the Board of Milk Control, the Milk Control Bureau, Montana milk market regulations, particularly the Montana statewide pooling arrangements

Chad Lee gave general updates for the Milk Control Bureau:

- The Milk Control Bureau office will be moving to 1225 8<sup>th</sup> Avenue and is required to be vacated from their current building by August 1<sup>st</sup>. The move, according to Mr. Lee, should be done in July
- The State Accounting Bureau and the State of Montana is adopting a governmental accounting pronouncement which requires that this fund be changed from being a fund held in a trust type of account to a special revenue account, resulting in a need for a budget for expenditures
  - The amount of revenue for cash coming in or expenditures for cash going out are not predictable or controllable by the Bureau or the Board of Milk

Control, but, is a result of milk prices and individual plants' market share of higher or lower value utilizations of milk. The DOL has been cooperative in working on that

- Mr. Honeycutt said the change in government accounting standards has also affected the DOL's stray funds, having been removed from the type it is now to a State Special Revenue account

### **11:54 AM –LUNCH**

### **12:51 PM – RECONVENE**

### **12:51 PM – ANIMAL HEALTH AND FOOD SAFETY DIVISION REPORTS**

### **12:52 PM – MEAT & POULTRY INSPECTION BUREAU**

### **12:53 PM – Administrative Rules - Recall**

Dr. Emily Kaleczyc requested the BOL's approval on a new Recall Rule:

- Dr. Kaleczyc said that this new rule would formalize and put into administrative rule the recall process that was worked out following a series of public meetings held two years ago between the DOL and the meat and poultry industry
  - Mr. Honeycutt explained that a Federal Audit of the Meat & Poultry Bureau two years earlier where it was found out that the DOL had not been implementing some things correctly in the program led to some disputes with several meat processors and then the DOL/meat and poultry industry meetings
- The rule outlines when a recall may be necessary, clarifies that a recall is a voluntary action of the establishment that produced the product in question and lays out a membership for a recall committee and the types of information that committee expects to review when making a recall recommendation
- There was concern expressed regarding the word "rigorous" in a statement in the proposed recall rule saying that industry encouraged the department to implement a more rigorous and transparent recall process
- Concern was expressed about one portion of the notice saying that if a recall is not recommended but a potential health risk to consumers exists, the department may notify the public of that risk through a public health alert
- No action was taken on the proposed new rule and it was requested to bring it back to the next BOL meeting

### **1:20 PM – Administrative Rules - Labeling**

Dr. Emily Kaleczyc requested the BOL's approval on a new Labeling Rule:

- Dr. Kaleczyc explained that for many years the DOL has reviewed labels for meat and poultry products from official establishments that have the State mark of inspection on the label prior to allowing them to use those labels on inspected

products. However, this policy is not listed anywhere in rule and this new rule would formalize the label review process that has been used for years, with a few minor changes

- The most significant change to the label review process would be that the DOL would put a 2-year limit on how long that review of the label would last
- Another change to the label review process would be that the establishment, rather than the inspector would fill out the label application
- Concern was expressed regarding the duration of time a label would be good for before requiring another label review, because of the cost of redesigning the label
- Concern was also expressed how present staff would be able to complete the new label review task if the Legislature would not approve funding or any additional FTE

## **MOTION/VOTE**

**1:39 PM**

**Sue Brown moved to publish the proposed new rule (MAR Notice No. 32-20-308) pertaining to Label Review, as presented by Emily Kaleczyc. Wendy Palmer seconded. Nina Baucus and Lila Taylor voted NO. The motion passed.**

### **1:39 PM – Discussion of Meat & Poultry Inspection Bureau Report Pulled from Consent Agenda**

There was discussion on the Meat & Poultry Bureau report that had been pulled from the Consent Agenda:

- Dr. Kaleczyc explained that regarding inquiries on people starting meat depots, Mr. Hamel usually handles those, but for the inquiries that she addressed, many who find out what is required to be inspected and the regulatory requirements they would have to meet, often decide it is not worth the investment for a small, wholesale account
- Dr. Kaleczyc explained that their Bureau gets very few inquiries about starting inspected slaughter facilities and that most are for processing ready-to-eat type products
- Gary Hamel reported that as far as new operations that are coming under inspection, there are currently six active applications that are less than two years old. He said the primary growth area has been in meat depots
  - Mike Honeycutt said that Cares Funding and the grants available through it could have something to do with the higher request in new facilities
- Mr. Hamel said that he has been planning for growth should there be an upswing in processing plants requiring inspection. He said that there is adequate inspection staff right now, especially with the addition of the relief inspectors that had been approved
- Mr. Honeycutt reported that a number of ideas on the Federal level and mostly governed by Federal law have the potential to impact the DOL, such as the Processing Revival and Intrastate Meat Exemption (PRIME) Act just introduced

into commerce allowing states to do whatever they want to do with meat within their borders

## **1:52 PM – VETERINARY DIAGNOSTIC LABORATORY**

### **1:52 PM – Personnel Status Change Request**

Dr. Gregory Juda expressed to the BOL his justification for the proposed request to transition a .5 FTE employee into a full-time FTE:

- Dr. Juda explained that a current .5 FTE employee, Erin Burns, currently works in the Milk Lab and he would like to transition her to be a full-time employee so she can also be utilized to do some various Quality Assurance activities
- Dr. Juda's explained that currently, there are two open Milk Sanitarian positions and that he would take .5 FTE from one and use it to make Erin Burns a full-time employee
- According to Dr. Juda, Erin Burns has been working around 55 hours per pay period, which is over the 40 hours she should be working as a .5 FTE
- Mike Honeycutt explained that with the fewer dairies to inspect, 46, compared to 200 as it was 10-15 years ago. He said the volume of milk to be tested is the same; the number of dairies to be inspected are less

## **MOTION/VOTE**

### **2:10 PM**

**Lila Taylor moved to transition a .5 FTE position to a 1.0 FTE position in the Milk Laboratory by transitioning .5 FTE hours from a vacant full-time Sanitarian position, as discussed. Sue Brown seconded. The motion passed.**

### **2:11 PM – Discussion of MVDL Bureau Report Pulled from Consent Agenda/BOL Discussion Regarding MVDL**

Dr. Gregory Juda answered questions from the BOL regarding the MVDL report, pulled from the Consent Agenda:

- Dr. Juda explained that the \$77,000 in increased test fee revenue compared to the previous year on May 31<sup>st</sup> was the effect of the test fee increases that had been implemented in January
- Dr. Juda reported that he does not yet have a run rate for what it costs the MVDL to run CWD tests, but has been speaking with other labs to get a better idea of what the supply costs are. He added that he feels pretty confident that the MVDL can execute and be able to get testing done for FWP with the staff they currently have
- Dr. Juda reported that he has been also checking with other Labs regarding the fast test for CWD that used an ear plug
- At this time, Dr. Juda said that he had not spoken with FWP regarding testing road kill cervids, but assumes they would have to put a policy in place and find funding to get that testing performed

- \$131,000 in USDA funding, as part of the NAHLN appropriation to the MVDL had been acquired, which can be used on CWD testing, whether it be equipment or supplies for the testing
- Even with the 3-week peak period during hunting season for CWD testing, Dr. Juda said he feels the MVDL will still be able to handle any Brucellosis testing as well, because each is handled by different portions of the MVDL
- The Bio-Rad employee who will be installing and qualifying the CWD equipment at the MVDL should be able to do that in July

## **2:22 PM –LUNCH**

## **2:33 PM – RECONVENE**

## **2:33 PM – ANIMAL HEALTH BUREAU**

### **2:34 PM – Proposed Rule Change, ARM 32.3.219, Special Requirements for Swine**

Dr. Tahnee Szymanski requested that the BOL approve proposed changes in ARM 32.3.219, which would increase the number of days required for swine to move after a health certificate has been issued:

- Currently, swine must be inspected within 10 days of movement, but this proposed change would increase it to 30 days to be uniform with the rest of the species that require a health certificate for movement. Dr. Szymanski added that the Federal standard is 30 days
- Dr. Szymanski reported that the incubation period for some diseases is longer than 10 days and that for horses, cattle and sheep, the health certificate is good for 30 days
- Concern was raised that allowing 30 days is like no inspection at all and there is a concern for re-infection during that amount of time. According to one BOL member, there is a 21-day quarantine on animals coming from other countries

## **MOTION/VOTE**

### **2:53 PM**

**Sue Brown moved to publish the proposed rule change, ARM 32.3.219, Special Requirements for Swine, as presented by Dr. Tahnee Szymanski. Wendy Palmer seconded. Sue and Wendy voted Aye. Nina Baucus and Lila Taylor voted NO. Gilles was undecided. The motion was tabled.**

It was requested by Brett DeBruycker that the DOL's swine representative address the issue for the BOL at the next BOL meeting

## **2:56 PM – North American Elk Breeders Association (NAEBA) Request Regarding Interstate Brucellosis Testing Requirements**

Dr. Tahnee Szymanski explained that the request, regarding eliminating interstate Brucellosis testing requirements for interstate movement of farmed Cervidae, had been brought to the BOL previously:

- The request for the change in Brucellosis testing requirements came about because of a letter to the DOL received from the North American Elk Breeders Association
- Dr. Szymanski said that a resolution had been adopted at a USAHA meeting that would eliminate interstate Brucellosis testing requirements for cervids outside the Greater Yellowstone Area (GYA)
- Travis Lowe, Executive Director for NAEBA told the BOL that several producers in Montana have been working with NAEBA over the last couple years on moving towards this direction. Lila Taylor questioned why none of those producers had contacted the DOL regarding the situation
- Travis Lowe said there is no Federal Brucellosis rule right now, and NAEBA has been working on the state level with organizations to repeal the Brucellosis testing requirements, one by one
- Mr. Lowe said that Idaho, Colorado and Texas represent about 2/3 of the movement of farmed elk in the US and just recently, Idaho and Colorado have repealed the testing requirement
- Dr. Szymanski said that Montana imports approximately 1 animal per year and in eight years, all of those importations have come from North Dakota

## **MOTION/VOTE**

### **3:10 PM**

**Gilles Stockton moved to accept the recommendation for the proposed rule changes to ARM 32.3.221, Special Requirements for Alternative Livestock, as presented by Dr. Tahnee Szymanski, with the amendment of continuing to require Brucellosis testing by the Greater Yellowstone Area states (MT, ID and WY). Sue Brown seconded. Lila Taylor voted no. The motion passed.**

## **3:12 PM – Proposed Rule Change to ARM 32.3.217, Special Requirements for Poultry**

Dr. Tahnee Szymanski explained that she was presenting this proposed rule change on behalf of Dr. Anna Forseth:

- The intent of this rule change is based upon the DOL requested change to Montana code that went through the last Legislature that removed the requirement for all animals that entered the State of Montana to have both a health certificate and an import permit and allowed animals to move on other approved documentation. This proposed change would clean up the current rule language to allow birds from National Poultry Improvement Plan (NPIP flocks) to enter Montana on an import permit called an X Form 9-3

- Poultry that do not originate from an NPIP certified flock would still be required to have a health certificate and obtain an import permit
- Another proposed change in the rule would follow the national standard of testing those birds at 4 months of age rather than 14 days of age
- Dr. Szymanski expressed her feeling that the effectiveness of that test in animals less than 4 months of age isn't completely effective because of immune factors in birds
- The BOL requested a couple minor changes be made in the language of the proposed rule

## **MOTION/VOTE**

**3:16 PM**

**Sue Brown moved to publish proposed changes to ARM 32.3.217, Special Requirements for Poultry as presented by Dr. Tahnee Szymanski with BOL changes in language as discussed. Lila Taylor seconded. The motion passed.**

### **3:16 PM – Adoption of Proposed Changes to Boundary of the Designated Surveillance Area (DSA) – ARM 32.3.433**

Dr. Tahnee Szymanski explained the reasoning behind the request to change the boundary lines of the DSA in Montana:

- During a live-elk capture the DOL and FWP conducted in January 2020 in the Ruby Mountains, two sero-positive elk were found
  - In response to the finding, the DOL published a proposed rule change to ARM 32.3.433, requesting that the DSA boundary be changed to include that area of the Ruby Mountains
  - One public comment was received in favor of the boundary expansion but requested that allowances be made for animals that moved to grass in the Spring, giving them a variance to do testing in the Fall
  - Dr. Szymanski said the response to the request was that the person's comment was consistent with risk assessments done on DSA herds in the past, but those were given at an individual level, not adopted in administrative rule
- Jay Bodner said that MSGA is not opposed to the boundary change and in speaking with their members, they are willing to accept the boundary change, not that they like it, as long as the cost for it is not borne by the producer
- Dr. Zaluski said that if passed, this would be the 4<sup>th</sup> expansion of the DSA since 2008, the year the DSA came into place
- Dr. Zaluski said that the largest reason for an increase in Brucellosis testing is the increase in voluntary testing with a motive that producers want to be able to test to assure themselves that their herd has not been infected
  - Dr. Zaluski reported that around four years ago, USDA scientists in Colorado, the Center for Animal Health group, found that on a per-animal basis, Montana had the lowest risk of the three GYA states of exporting a Brucellosis-positive animal out of its borders without knowledge

## **MOTION/VOTE**

**3:19 PM**

**Lila Taylor moved to adopt the proposed boundary changes to ARM 32.3.433, Designated Surveillance Area, as discussed. Nina Baucus seconded. The motion passed.**

### **3:28 PM – Renewal of USAHerds Maintenance Agreement**

Dr. Tahnee Szymanski requested the BOL approve the renewal of the annual USAHerds maintenance contract, the software used to track animal movements, the Brucellosis program and the alternative livestock program for the DOL:

- Dr. Szymanski explained that the contract itself remained unchanged with a renewal cost of \$26,522. An additional electronic health certificate configuration and maintenance cost option is available for a cost of \$12,500
- USAHerds has been used by the DOL for the past 9 years
- Contract renewal cost is split between Animal Health funds and Federal Animal Disease Traceability (ADT) funds
- \$7000 of the \$12,500 health certificate option is a one-time cost for configuration
- The addition of the electronic health option would allow veterinarians to view calfhood vaccination certificates for Brucellosis test charts and TB test charts for submission to the MVDL
- Dr. Szymanski reported that each year in the state of Montana, approximately 5,000 vaccination certificates come into the Helena office and are hand-entered into the system, taking approximately 30 hours per week of time
- Dan Olson explained that the proprietary software for the USAHerds program is through a company called Acclaim and that end users and IT staff in the DOL have access to the database and that any changes needing to be made to it are made by Acclaim
  - The IT staff authorizes who has what for administrative privileges to access the database
  - Dr. Szymanski said that certain individuals at USDA Veterinary Services have been given passwords for read-only access to the database
- Dan Olson explained that as far as security purposes, Acclaim does patches and updates semi-annually and match the State of Montana security standards
- Dr. Szymanski said that there are other options for electronic health certificates for veterinarians, but this option was created by the State of Colorado and is currently being used by other states at no cost for veterinarians to use. The software can be used remotely where there is no cell phone service and a health certificate can still be generated for animals to move
- Concern was raised regarding wording in a portion of the Acclaim contract as to whether or not signing the contract would lock the State of Montana into purchasing RFID tags exclusively from that same company
  - Dan Olson said that he would check with Acclaim and find out if the paragraph containing that particular verbiage could be pulled

- Dr. Szymanski explained that the primary data contained in USAHerds is Animal Health data, but if there is functionality that other Divisions or Bureaus in the DOL could utilize, Animal Health would be happy to share that functionality with them
- Dan Olson said that in the DOL there are three modules currently being used that will be part of the HB10 initiative, and those are Animal Health's USAHerds, Brands' Fort Supply and MVDL's LIMS. He said he could give an overview at the next meeting of the three, if the BOL would like
- Mike Honeycutt explained that these softwares handle specific-type information with a solution that is not one-size-fits-all, and so it cannot just be purchased off the shelf, the needs are niche

## **MOTION/VOTE**

**3:49 PM**

**Sue Brown moved to approve the renewal of the USAHerds annual maintenance contract through Acclaim, for \$26,522.50, with an additional \$12,500 for VET CVI/TB/Brucellosis configuration and maintenance. Wendy Palmer seconded. Nina Baucus voted NO. The motion passed.**

### **4:09 PM – Update on Yellowstone Park Bison Quarantine**

Mike Honeycutt said that he had requested this topic be added to the agenda to assure that the BOL was informed on what was happening, specifically at the Stephen's Creek Capture Facility:

- There are 11 bulls that have been declared, certified Brucellosis free and eligible for assurance testing according to the USDA
- Once the bison are moved from the Stephen's Creek Capture Facility to Fort Peck's Quality Assurance Facility, they will stay there for a year and be tested two more times before they can be moved anywhere else
- Dr. Marty Zaluski reported that they have been working closely with USDA, specifically Dr. Ryan Clark, making sure that bison housed at Fort Peck's Quality Assurance Facility meet those assurance requirements
- Dr. Zaluski reported that the bison at the Moiese bison range, north of Missoula are Brucellosis-free and have the same disease status as Montana's cattle herds
- Brett DeBruycker requested that Mike find out if the Federal Government moves bison from the National Bison Range whether or not that movement requires a transportation permit

### **4:13 PM – Discussion of Milk & Egg Bureau Report Removed from Consent Agenda**

BOL discussion took place regarding the Milk & Egg Bureau Report that had been removed from the Consent Agenda:

- Concern was raised regarding the reliability of communication by a postcard mailing which was done by the Milk & Egg Bureau to explain to approximately

150 retailers the meaning of the multiple dates now displayed on gallon milk jugs in Montana

**4:16 PM – RECESS**

**4:21 PM – RECONVENE**

**4:21 PM – CENTRALIZED SERVICE DIVISION REPORTS (Continued)**

**4:21 PM – FISCAL BUREAU**

Evan Waters introduced himself to the two new BOL members and let them know that he was the Finance and Accounting Bureau Chief, and today was presenting for Deputy Executive Officer, Brian Simonson

**4:23 PM – Per Capita Fee Status Report**

Evan Waters updated the BOL on the per capita fee collection report, which compares last year's collections to this year's collections:

- A June 12, 2020 report on the livestock reporting system showed the DOL about \$70,000 behind last year's collections, but in looking at the report from yesterday, more per capita fee monies had been collected than at this same time last year
- Brett DeBruycker expressed his relief that the per capita collections were doing so well, since the electronic reporting system had only been in place for two years, and it appeared that livestock producers have adjusted to the new way of reporting
- Mr. Waters reported that three databases of names of possible equine owners who had not paid per capita fees, were combined and condensed down to a little over 5,000 names and sent letters in May 2020 regarding per capita payments
  - Around 2000 of the letters were returned to the DOL as having bad addresses
  - 600-700 of those receiving letters came back as new per capita fee reporters, adding around \$50,000 extra in per capita revenues
- Mr. Waters reported that he had not gone back to see just how much of last year's \$298,000 in uncollected per capita fee had been collected by the Department of Revenue, and added that those uncollected go into an offset system where it goes against anyone who is going to get a Montana tax refund

**4:30 PM – May 31, 2020 State Special Revenue Report**

Evan Waters updated the BOL on the latest State Special Revenue numbers for the DOL:

- Per capita numbers from May 31, 2020 show the DOL \$650,000 behind in collections from the previous year, but many people sent in their per capita payments after June 1, 2020
- New Brands and Transfers are up \$122,000 because of being so close to the end of the 10-year amortization period for brand rerecord

- The Livestock Dealers License collection are right on track, being only about \$1,000 off from the previous year
- Local inspections, those done by DOL Market Inspectors being called out, were down \$73,000
- Mike Honeycutt pointed out that even though the markets have lately been really slow, in the first half of this fiscal year, they were really busy, somehow bringing the Market Inspection Fees very close to what the markets were a year ago
- Milk Inspection Fees were down about \$25,000 from last year, possibly because of the reduction in dairies.
- Egg Grading Fees are over \$25,000 from last year, possibly because of the timing the DOL received payment from Wilcox Foods
- Test fees charged from the MVDL to the Federal Umbrella, \$90,000, made the MVDL numbers look considerably better than a couple months previous
- The Wolf Mitigation Fund, established during the 2019 Legislative Session added \$8000 this past month

#### **4:38 PM – May 31, 2020 Cash Balance Report**

Evan Waters reported that the DOL's cash fund balances as of May 31, 2020 looked pretty healthy:

- Both per capita fee balance and brands fees are sitting really well
- There is currently \$2.7 million of Brand Inspection Fees in the cash balance - the Unearned Revenue figure of \$1.6 million is money that cannot be used until 2021; \$900,000 is liquid and can be used or spent
- Mr. Honeycutt explained that the DOL will be setting aside a portion of per capita funds to fund that down payment for the proposed new MVDL, in case the Legislature approves the Long Range Building Plan (LRBP) for that Lab

#### **4:42 PM – Expenditure Projections**

Evan Waters explained that his next report, the budget expense comparison report, shows the comparison expenses between two years showing what is the remainder of the DOL budget:

- The DOL has a \$15 million budget, and as of May 31, 2020, had spent \$11.7 million of it, compared to spending \$11.2 million of it in the same time period last year
- The DOL is in the first fiscal year of the new biennium compared to last year's numbers, which were in the last fiscal year of a previous biennium. More spending authority had been given to the DOL than in the previous biennium
- Mike Honeycutt explained that where the DOL stands right now, there is more cash than authority, meaning that the DOL cannot spend all of that cash, but only what the Legislature has granted in authority for it to spend
- State Special Revenue spending authority is authorized to be reallocated between State Special Revenue programs within the same program to offset negative balances
- Regarding the two December 2019 retirements in the Milk & Egg Bureau, that still remain vacant, Mike Honeycutt said he does not know how long the

vacancies can remain in place until those FTEs might be removed by the Legislature

- With the vacancies in quite a few key positions in the DOL this year, Mr. Water's explained that there is about a \$480,000 projected budget excess in Personal Expenses
- Operations are showing a very positive budget excess, possibly because of a decrease in Brucellosis testing, which also affects the general fund numbers compared to the previous month
- The general fund balance for the DOL was also increased because of the Meat & Poultry Inspection program being awarded \$50,000 last month from FSIS
- The nearly \$30,000 budgeted general fund deficit in the Meat and Poultry Inspection Bureau will be mitigated with authority transferred possibly out of the MVDL or the DSA
- Out of \$2.5 million in general fund allocated, there is about \$229,000 left unspent
  - The MVDL will be utilizing some of the unspent general fund allocation dollars for some of the items originally requested in their EPP list for the biennium
  - Evan Waters reminded the BOL that there is a limit to what can be spent when changing operations funds to equipment funds, which is 25% of the lowest authority, and then it will trigger a Legislative Finance Division (LFD) notification
- Mr. Honeycutt said that Brett DeBruycker, Brian Simonson and he attended the exit conference with the Legislative Audit Committee, but had not received their final report yet. But, once that is received, the DOL's first responsibility will be to write a response to that and send it to them
- The additional \$178,000 in Federal funding was for Brucella, being divided between equipment for the MVDL and into the MVDL's budget

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

**5:08 PM**

Taylor Brown, Northern Ag Network, was the lone person to submit public comment on non-agenda items when requested by Brett DeBruycker:

- Mr. Brown complimented Mr. DeBruycker on the great job he did on his first day serving as Board Chairman
- Mr. Brown also complimented staff on their way of bringing the two new BOL members up to speed during the meeting with their summaries on various subjects addressed
- The BOL was exhorted by Mr. Brown to know the DOL budget, ask questions about it and added that the DOL budget was looking really positive
- Another exhortation from Mr. Brown, specifically to the two new BOL members, was to watch and listen to the older BOL members and to go to Audit Committee meetings or view them online when they come up for the DOL

- Mr. Brown said to make sure ahead of time when going before the Legislature that they already know what you have in mind to present and to be engaged and do your homework
- Mr. Brown urged the BOL to be hesitant to raise per capita fees and said he was thrilled to see the increased collections from horse owners resulting from the mailing. He said before considering raising per capita fees, try to figure out how to get the fees from those who aren't paying their per capita fee
- Mr. Brown questioned the relationship between livestock depredation payments and per capita fee payments
  - Nina Baucus pointed out that oftentimes those who have had livestock losses do not send their claim form in for quite some time after the loss
- According to Mr. Brown, the 14 Livestock Investigators deserved the increase in their hourly wage and thanked Mr. Honeycutt for paying that to them

## **SET DATE FOR THE NEXT BOARD MEETING/REQUEST FOR ADJOURNMENT**

**5:19 PM**

Brett DeBruycker said that skipping July and then having an August meeting would not work well for him and that having a July BOL meeting would be better for him:

- Mike Honeycutt said that with fiscal year end working going on in the month of July, if a BOL meeting was held that same month, the financial report would not be quite as detailed as in previous meetings
- Evan Waters reported that the books do not officially close until July 28<sup>th</sup>
- Mike Honeycutt said that the heavy lift for Legislative issues is done with both Legislative requests and EPP budget requests already done and that at the moment, there is not another deadline looming that involves the BOL
- It was decided to schedule the next BOL meeting for Wednesday, July 22, 2020

## **MEETING ADJOURNED**

**5:25 PM**

  
 \_\_\_\_\_  
 Brett DeBruycker, Chairman



PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

**ENVIRONMENTAL QUALITY COUNCIL INTERIM COMMITTEE**  
**67th Montana Legislature**

<b>SENATE MEMBERS</b>	<b>HOUSE MEMBERS</b>	<b>COMMITTEE STAFF</b>	<b>PUBLIC MEMBERS</b>
Pat Flowers	Willis Curdy	Joe Carroll - Attorney	Scott Aspenlieder
Steve Hinebauch	Steve Gunderson	Joe Kolman - Legislative	John Brenden
Mike Lang	Bradley Hamlett	Environmental	Patrick Holmes, Gov. Rep.
JP Pomnichowski	Jim Keane	Analyst	Rex Rogers
Cary Smith	Theresa Manzella	Nadine Spencer - Secretary	Matt Vincent
Gene Vuckovich	Kerry White	Hope Stockwell - Research Analyst	

## MINUTES LOG

May 27, 2020  
Remote Zoom Meeting

Please note: This document is a Minutes Log and provides annotation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video recording of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of the meeting activities. The 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://legmt.gov>. From the home page, select the "Committees" drop down menu at the top, then select Administrative or Interim, and the appropriate committee. The written minutes log can be located by expanding the accordion menu for the date of the meeting. Links to the audio/video files can be located by selecting the Video/Audio button on the same page, then the "past/current recordings" button. From there, use the calendar to select the date of the meeting you wish to view/listen to. The written Minutes Log, along with links to the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the Exhibits is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed. Please contact the Legislative Services Division at 406-444-3064 for more information.

### ROLL CALL

#### **Members Present Remotely:**

Rep. Jim Keane, Chair (D)  
Sen. Mike Lang, Vice Chair (R)  
Scott Aspenlieder, Public Member  
John Brenden, Public Member  
Rep. Willis Curdy (D)  
Sen. Pat Flowers (D)  
Rep. Steve Gunderson (R)

Rep. Bradley Hamlett (D)  
Sen. Steve Hinebauch (R)  
Patrick Holmes, Public Member  
Rep. Theresa Manzella (R)  
Sen. JP Pomnichowski (D)  
Rex Rogers, Public Member  
Sen. Cary Smith (R)  
Matt Vincent, Public Member  
Rep. Kerry White (R)

**Members Excused:**

Sen. Gene Vuckovich (D)

**Staff Present Remotely:**

Joe Carroll, Attorney  
Joe Kolman, Legislative Environmental Analyst  
Nadine Spencer, Secretary  
Hope Stockwell, Research Analyst

**Committee Business Summary**

The Environmental Quality Council (EQC):

- Voted to withdraw the informal objection to MAR Notice No. 17-406: Supplemental Notice of Proposed Adoption.

**AGENDA (Attachment 1)**

**Call to Order/Roll Call**

10:00:30 Rep. Keane call the meeting to order at 10:00 a.m. The secretary called the roll. [\(Attachment 2\)](#)

**HJ38 Solar and Wind Bonding; Colstrip Update**

10:02:55 Sonja Nowakowski, research director, Legislative Services Division (LSD), research staff assigned to HJ 38, provided an introduction and said the Council asked for some follow up information on Colstrip.

10:03:37 Ms. Nowakowski said today the committee will talk about legislation and laws that were enacted in 2017 and 2019 on solar and wind bonding.

10:03:57 Ms. Nowakowski said the Council received a Colstrip update including information on Montana's Coal-Fired Generating Unit Remediation Act. [\(Exhibit 1\)](#)

10:06:11 Ms. Nowakowski provided an update on the bond the Department of Environmental Quality (DEQ) received related to the Administrative Order on Consent (AOC).

10:07:37 Ms. Nowakowski said the Council received a background report and material that outlines wind and solar bonding requirements and remediation from around the United States. [\(Exhibit 2\)](#) Ms. Nowakowski said in 2017 the legislature enacted bonding and remediation requirements for wind facilities that were greater than 25 megawatts and in 2019 amended the law and incorporated solar greater than 2 megawatts.

10:11:45 Kyla Maki, DEQ, provided background information on wind and solar bonding and decommissioning rules, an update on the status of the current rule amendments, and an overview of the department's process for collecting decommissioning plans and bonds from the covered wind and solar facilities.

### **Public comment**

None

### **EQC questions and discussion**

10:18:37 Rep. Keane asked Ms. Maki about bonding and how a facility can have a zero bond.

10:19:39 Rep. Keane commented on salvage value.

### **Update on Libby Asbestos Superfund Oversight Committee**

10:20:56 Jenny Chambers, Waste Management and Remediation Division administrator, DEQ, provided information on the annual report. [\(Exhibit 3\)](#)

10:30:02 Rep. Gunderson commented on the oversight committee.

10:30:51 Rep. Keane asked Ms. Chambers about funding for the operation and maintenance of the Superfund site.

### **Public comment**

None

### **EQC questions and discussion**

10:33:51 Rep. White asked Ms. Chambers about the funds available from the EPA.

10:37:47 Rep. Curdy asked Ms. Chambers about approval for the remediation off-load site for Operable Unit 1.

10:38:25 Rep. Curdy asked Ms. Chambers about remedy for the mine site.

10:40:08 Rep. Hamlett asked Ms. Chambers about the security of the funding that was set aside and if it is permanent.

### **Statutory Administrative Rule Review**

10:41:36 Joe Carroll, staff attorney, LSD, said there are three rules for the Council to review. [\(Exhibit 4\)](#) He said the EQC's objection to the technically enhanced naturally occurring radioactive material (TENORM) rules will expire unless the Council renews its objection.

10:43:06 Rep. Keane asked Mr. Carroll about the rules.

10:43:31 Rep. Keane asked Sen. Lang about the objection to the TENORM rule.

10:43:42 Sen. Lang asked about the process regarding the EQC's objection to the TENORM rule.

10:45:24 Sen. Lang asked Mr. Carroll what will happen if the Council does not take any action on the rule.

- 10:45:41 Sen. Lang said he recommends allowing the rule to expire.
- 10:46:40 Rep. Keane said he recommends making a motion to allow the rule to expire.
- 10:46:58 Joe Kolman, legislative environmental analyst, LSD, said the correct motion is to withdraw the objection.

### **Motion**

- 10:47:14 Sen. Lang moved to withdraw EQC's informal objection to MAR Notice No. 17-406: Supplemental Notice of Proposed Adoption.

### **Public comment**

- 10:47:44 Patty Whitford, Sidney.
- 10:48:40 Travis Ross.
- 10:49:09 Alan Olson, executive director, Montana Petroleum Association.
- 10:51:17 Laurel Clawson, Sheridan County.
- 10:52:34 Dick Iversen, Sidney.
- 10:53:28 John Ahlquist, Glendive, certified health physicist. [\(Exhibit 5\)](#)
- 10:54:38 Seth Newton, Glendive. [\(Exhibit 6\)](#)
- 10:55:00 The EQC also received additional written public comments. [\(Exhibit 7\)](#)

### **EQC questions and discussion**

- 10:55:34 Rep. Gunderson said he reached out to the state of North Dakota and that it assembled a four member panel to examine TENORM.
- 10:57:15 Rep. White said the DEQ indicated in its response that its intent in allowing individual loads with higher concentrations was to discourage illegal dumping. [\(Exhibit 8\)](#) Rep. White asked if that meant illegal dumping into a facility or into a field or an unpopulated area. Shawn McGrath, director, DEQ, commented on the concern with illegal dumping.
- 10:59:59 Rep. White asked Mr. McGrath about illegal dumping and to provide information on the number of reports of illegal dumping that have occurred in the past.
- 11:01:58 Rep. White asked Mr. Olson about the complexity of complying with the new regulation.
- 11:04:14 Rep. White asked the DEQ to keep the EQC and the legislature informed on how the regulatory mechanism is working.
- 11:04:33 Rep. Keane commented on the rule, the supplemental rule, and DEQ's efforts to continue working on the issues.
- 11:05:29 Sen. Lang commented on the process and said the EQC was able to do its due diligence and learn more about TENORM. He thanked Rep. Gunderson for engaging other states and also thanked Mr. McGrath.
- 11:06:31 Sen. Keane also thanked Rep. Gunderson.

## **Vote**

11:06:50 The motion carried 12-2 by roll call vote with Rep. Gunderson and Rep. White voting no. Sen. Vuckovich was excused. Rep. Hamlett was absent but noted he would have voted for the proposal as noted at timestamp 11:23:48. ([Attachment 3](#))

## **WPIC Update**

11:09:43 Jason Mohr, research analyst, LSD, and staff for the Water Policy Interim Committee (WPIC), provided information on the WPIC meeting last week.

## **EQC questions and discussion**

11:15:27 Rep. Keane asked Mr. Mohr about the nutrient standards.

## **ETIC Update**

11:17:28 Trevor Graff, research analyst, LSD, and staff for the Energy & Telecommunications Interim Committee (ETIC), provided an update from the ETIC meeting last week.

## **EQC questions and discussion**

11:22:52 Rep. Keane asked Mr. Graff about support for creating an advocacy group within the Public Service Commission. He requested that Mr. Graff keep the Council updated on the bill draft.

11:23:48 Rep. Keane asked Rep. Hamlett about his vote on the motion to withdraw EQC's informal objection to the DEQ rule. Sen. Hamlett voted yes.

## **Lunch**

11:24:54 Recess for lunch

13:00:17 Reconvene

## **Chronic Wasting Disease**

13:00:38 Hope Stockwell, research analyst, LSD, provided an overview and introduction.

## **Latest research on transmissibility**

13:02:01 Dr. Debbie McKenzie, University of Alberta associate professor, presented information on chronic wasting disease (CWD) and transmission to other species. ([Exhibit 9](#))

13:14:31 Dr. Brent Race, Rocky Mountain Laboratories, Hamilton, presented information on current research and the potential for CWD to infect humans. ([Exhibit 10](#))

## **EQC questions and discussion**

13:26:48 Rep. Keane asked Mr. Race about the testing done on animals.

- 13:28:27 Sen. Lang asked Mr. Race if there are other species that become compromised and are more susceptible to CWD.
- 13:29:55 Rep. Curdy asked Ms. McKenzie how long they have been studying prions and the potential for human infection.
- 13:32:55 Sen. Lang asked about testing or development of vaccines to prevent transmission of CWD to humans. Ms. McKenzie said they are working on a vaccine to prevent the spread to cervids.
- 13:34:14 Mr. Race said there is no vaccine to prevent the spread to humans.
- 13:34:51 Ms. McKenzie said the vaccine being worked on at the University of Alberta could eventually be adapted to different species.
- 13:35:48 Sen. Flowers asked about testing for CWD in waterways. Ms. McKenzie said there is one report on detecting prions in the water supply.
- 13:37:03 Rep. Hamlett asked Ms. McKenzie about deterioration of prions in soil.
- 13:40:36 Rep. White asked Ms. McKenzie if wildlife corridors have a significant impact on the spread of CWD.
- 13:42:32 Rep. White asked Ms. McKenzie what Canada is doing to contain CWD and about restrictions for transporting animals.
- 13:44:04 Rep. Keane asked about managing the spread of CWD by reducing the size of a herd. Ms. McKenzie said herd reduction is one of the best approaches to slow the expansion of the disease.
- 13:46:05 Mr. Race commented on live animal tests that are being developed and managing the spread of CWD.
- 13:47:55 Rep. Keane asked Mr. Race about live animal testing.
- 13:50:34 Sen. Lang asked about CWD in bison. Ms. McKenzie said there has not been a transmission study done on bison, but data suggests the prion protein or susceptibility factor indicates bison are relatively resistant to CWD.
- 13:52:03 Mr. Race said the prion protein in bison is very similar to the prion protein in cattle and cattle are fairly resistant to CWD.
- 13:52:46 Rep. Keane thanked Ms. McKenzie and Mr. Race.

### **Game farms and CWD**

- 13:53:45 Dr. Amy Horn-Delzer, program manager, Wisconsin Division of Animal Health, provided information on the program in Wisconsin for farm-raised deer and their experience with CWD. ([Exhibit 11](#))
- 14:05:33 Dr. Darlene Konkle, Wisconsin State Veterinarian, said they continually look at risk and try to develop more tools on how to evaluate risk in farm-raised deer.

### **EQC questions and discussion**

- 14:07:26 Rep. Keane asked Ms. Horn about the voluntary herd status program.

14:09:33 Rep. White asked Ms. Horn about soil contamination and requirements to neutralize or sterilize soil on game farms.

14:13:18 Rep. White asked Ms. Horn about feed contamination.

### **History and present status in Montana**

14:15:10 Dr. Martin Zaluski, state veterinarian, Department of Livestock, provided information on the herd certification program in Montana.

14:19:45 Rep. Keane asked Mr. Zaluski about a herd infected with CWD and about the fencing inspection program.

### **Looking ahead in Montana**

14:21:21 Ken McDonald, Wildlife Division administrator, Department of Fish, Wildlife, and Parks (FWP), provided information on management of CWD in Montana.

14:33:07 Dr. Greg Juda, Veterinary Diagnostic Lab director, provided an update on internal testing capability and the plan to get the lab ready for CWD testing.

### **EQC questions and discussion**

14:39:21 Mr. Brenden asked Mr. McDonald about having testing available for hunters, in northeastern Montana, on the weekends.

14:42:43 Sen. Flowers asked Mr. Juda if the lab will pursue certification for the CWD RT-QuIC test.

14:43:38 Rep. Keane asked Mr. McDonald about using the RT-QuIC test.

14:45:06 Mr. Race said Mr. Juda can contact him directly about the test or Colorado State University for information about getting accreditation for the test.

14:45:59 Rep. White asked Mr. McDonald about plans for public education following the detection of CWD in the Springhill area near Bozeman and about collaboration with the Department of Transportation for testing roadkill deer and ungulates. Mr. McDonald provided information on testing roadkill animals and redirected the question on the detection of CWD to Dr. Jennifer Ramsey, wildlife veterinarian, FWP.

14:48:38 Ms. Ramsey.

14:49:47 Rep. White asked Mr. McDonald if he will be available after the State Lab Advisory Committee update for a question.

14:50:20 Rep. Hamlett asked if glandular scent can be a vector for CWD. Ms. Ramsey said there is a potential that it could contain lymph node tissue and some glands that are likely to contain prions from an animal with CWD.

14:51:21 Rep. Hamlett commented on the disposal of an infected herd that was buried near Great Falls and said the soil may still be contaminated.

14:52:02 Mr. Vincent asked Mr. McDonald about expanding surveillance on roadkill animals and reaching out to county animal control districts.

- 14:54:22 Mr. Vincent commented on the area for collecting samples.
- 14:54:58 Mr. McDonald said the 2019 annual report has information on where the distribution of samples came from including samples collected and submitted by hunters.
- 14:55:28 Rep. Gunderson commented on help from FWP for urban planning. Mr. McDonald said FWP biologists are probably the best source to help at both the city and county level.

#### **Urban deer statute review**

- 14:57:30 Ms. Stockwell provided information on the statute dealing with managing urban game populations. **(Exhibit 12)**
- 15:00:43 Ms. Stockwell said information is available on the EQC website regarding regulations from other states and Canada related to the transport of harvested animals. **(Exhibit 13)**

#### **EQC questions and discussion**

None

#### **Public comment**

- 15:02:49 Nick Gevock, Montana Wildlife Federation.
- 15:04:01 Rep. Keane commented on receiving updates on the RT-QuIC test and the impact of being able to test live animals.

#### **State Lab Advisory Committee Update**

- 15:05:00 Rep. White said he sent a letter from the subcommittee to the U.S. Department of Agriculture asking for funding. He said he received a response from Secretary Sonny Perdue indicating there will be a discussion on appropriating funds at an upcoming summit. He said there are no additional subcommittee meetings scheduled and that he hopes funding for updating the lab facility can be brought during the 2021 legislative session.
- 15:09:12 Rep. Hamlett said the experience with COVID-19 shows the need for a high-quality lab that can handle testing in-state.
- 15:10:27 Rep. Keane said the state deserves a better lab facility and it needs to be a priority.

#### **Public comment**

None

#### **EQC questions and discussion**

- 15:12:30 Mr. Zaluski said Dr. Tahnee Szymanski attended the CWD summit last week and that it focused primarily on the science of CWD and the surveillance program rather than funding. He said she can provide a report to the EQC and Dr. Juda can provide updates on planning for a new veterinary diagnostic building.

- 15:13:44 Rep. Keane asked Mr. Zaluski about the amount of funding needed.
- 15:14:12 Rep. White said Secretary Purdue indicated that after the summit, funding would open for application of online grants. He asked Mr. Zaluski about possible funding through the grant program.
- 15:15:29 Rep. Keane said it is easier to get funding through the legislature if there is other money available as well.
- 15:15:57 Rep. White commented on trying to get funding to build the facility from a private investor for a cost recovery and a lease back. He said in order to do that they need more specific design criteria which costs \$150,000.
- 15:18:59 Rep. Keane asked Mr. Zaluski about money for the design. Mr. Zaluski said they have been working with designers and architects and have produced a draft floor plan for a facility.
- 15:20:20 Rep. Keane asked Rep. White if he has seen the design plan.
- 15:22:05 Rep. Keane asked Rep. White to look at the plan and discuss options going forward.

### **Other Business**

- 15:23:23 Sen. Lang asked Mr. McDonald about funding FWP received from the U.S. Department of the Interior for grizzly bear controls.
- 15:25:17 Sen. Lang asked Mr. McDonald if the money was from Pittman-Robertson funding.
- 15:25:41 Sen. Lang asked that staff find out where the U.S. Fish and Wildlife Service got the money and how it will be spent in Montana.
- 15:25:55 Rep. Keane provided clarification on the information requested by Sen. Lang.
- 15:26:17 Rep. White asked Mr. McDonald about funding from the Department of Justice, Natural Resource Damage Program, for a proposal from FWP Region 2 for a restoration project along the Upper Spotted Dog Creek.
- 15:30:19 Rep. Keane said the money came from the Atlantic Richfield Company as part of the natural resource damage lawsuits.
- 15:31:20 Rep. White said he was concerned about the proper use of the funds.
- 15:31:52 Rep. White asked Mr. McDonald about the amount that is being appropriated out of the fund. Mr. McDonald said he will get the information. Rep. Keane said he would also like the information.

### **Public Comment on any Matter not Contained in this Agenda and that is within the jurisdiction of the EQC**

None

### **ADJOURNMENT**

- 15:32:55 Rep. Keane adjourned the meeting at 3:32 p.m.