



**DRAFT Libby Asbestos Superfund Oversight Committee  
Meeting  
December 17, 2019  
1:00 PM**

**Location of Meeting:**

Metcalfe Building, Room 111  
1520 East 6<sup>th</sup> Avenue  
Helena, MT

\*Remote access was also available.

**Call to Order and Pledge of Allegiance**

The Libby Asbestos Superfund Oversight Committee conference call was called to order at 1:03 PM on December 17, 2019.

This was the 10th meeting in accordance with the Montana Code Annotated 75-10-1601. Public notice of this meeting was provided via newspaper ads, press release, social media, and the DEQ website.

**1. Roll Call**

Commissioner Mark Peck conducted a roll call of attendees and confirmed that a quorum of Advisory Team members was present. The following persons were present or attended by phone:

Oversight Committee Members:		
Director of DEQ or designated representative	Shaun McGrath	Present in Helena
Lincoln County Commissioner designated by the Commission	Commissioner Mark Peck	Present in Helena
Member of the House of Representatives whose district includes at least a portion of Lincoln County appointed by the speaker of the House	Representative Steve Gunderson	Present by Phone
Citizen of Lincoln County nominated by the Lincoln County Commission and selected by the governor	George Jamison *Confirmed October 2017 by Governor *Reconfirmed July 2019	Present in Helena
Member of the Senate whose district includes at least a portion of Lincoln County appointed by the Senate president	Senator Mike Cuffe	Present in Helena

<u>Other Interested Attendees</u>	<u>Affiliation</u>	
Jenny Chambers	DEQ	Present in Helena
Tom Stoops	DEQ	Present in Helena
Carolina Balliew	DEQ	Present in Helena
Lisa DeWitt	DEQ	Present in Helena
Jessica Wilkerson	DEQ	Present in Helena
Jason Rappe	DEQ	Present in Helena
Bret Romney	Facilitator	Present in Helena

Virginia Kocieda	Lincoln County Asbestos Resource Program	Present in Helena
Jenny O'Mara	Weston	Present by Phone
Elzhon Anderson	Lincoln County Asbestos Resource Program	Present by Phone
Ray Stout	Kootenai Valley Record	Present by Phone

2. Agenda Item	Discussion
Review and approve minutes. <ul style="list-style-type: none"> <li>September 19, 2019</li> </ul>	<p><b><u>Chairman Peck</u></b></p> <p><b><u>September 19, 2019 Meeting</u></b></p> <p><b><u>George Jamison:</u></b> Suggested correction, not a big deal, but under the oversight committee member listing for my position says confirmed October 17<sup>th</sup> and it was actually reconfirmed in July of 2019. Expires July 1<sup>st</sup>, 2021.</p> <p><b>Motion By:</b> Representative Steve Gunderson  <b>Second By:</b> Senator Mike Cuffe</p> <p><b>Approve.</b></p>

3. Agenda Item	Discussion	Document Link
Budget Report – Tom Stoops	<b><u>Tom Stoops:</u></b> Summarized the budget overview. See document link.	<p><b><u>December 2019 Budget Overview:</u></b></p> <p><a href="http://deg.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/December%202019/Libby%20Budget%20Overview%20December%202019_final.pdf?ver=2019-12-13-134515-743">http://deg.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/December%202019/Libby%20Budget%20Overview%20December%202019_final.pdf?ver=2019-12-13-134515-743</a></p>

4. Agenda Item	Discussion
Follow Up Discussion on Committee Roles – Senator Mike Cuffe	<p><b><u>Senator Mike Cuffe:</u></b> Last meeting we wound up in quite a discussion regarding the role of the committee in HB 30 and I was not satisfied with the result of the conversation in the meeting, so I called up the Director and I believe that we came to a mutual understanding. I didn't bring it up in the minutes because the minutes reflect accurately what was said but the Director Shaun McGrath is said that after the August 12 meeting, we all understood this is an advisory committee and then Commissioner Peck made a comment we have some authorized authority but advisory in nature. I think we were basically understanding the same thing, but in my reading of HB 30, we changed the words from advisory committee to an oversight committee every place in the bill and the committee was charged with the responsibility of studying things and coming up with recommendations to the department and my understanding of the whole idea of that was that recommendations we are charged to make these recommendations to the ultimate decision-maker and yes there are things beyond which we cannot direct him to do and we don't necessarily direct him to do, we are recommending but recommendation when you're charged to study and make a recommendation should carry more weight than simple advice and I think we came to agreement on the phone that that was correct and that the recommendations would be taken as a weighty or kind of a information then simple advice from an advisory committee. Have I accurately reflected, if I might refer to the Director? Thank you, Mr. Chairman.</p> <p><b><u>Director Shaun McGrath:</u></b> Thank you Senator for raising this. I agree that we had a very good conversation and appreciated first you reaching out and allowing the conversation. I do think you have accurately characterized where we discussed with maybe on minor edit. I would make and when you said that I would hold you or I would see the advice recommendations coming out of this as great than an advisory committee. I want to be clear that we do view this as an</p>

4. Agenda Item	Discussion
	<p>advisory committee and so it's not that it's that, the old calling this an oversight team or committee is not what gives it the clout in my mind, what it is, is the clout of the numbers that make up the group and that's what carries the weight with me and the fact that the Director serves on this group with you gives us a chance to work through these ideas and clearly if in our conversation we are able to get to a common place on a recommendation, I think that bodes well for the ultimate decision that the, at least in my case, the Director would make. Does that clarify?</p> <p><b><u>Senator Mike Cuffe:</u></b> What I will say is if the legislature intended this to be a simple advisory committee regardless of the makeup, it would have left the word advisory committee instead at multiple places in the legislation that changed it to oversight with recommendation authority. Again, we are kind of picking, but at some point, you and I may be gone. We have good understanding, but at some point, someone else may be sitting here. I do think it's an oversight committee and we do make recommendations as charged.</p> <p><b><u>Director Shaun McGrath:</u></b> To the legislation, the one point I would make is the roles of the committee are spelled out in statute and the name of the committee does not spell out what those roles are. That's the meat of the bill, so I guess, I would just leave it at that.</p> <p><b><u>Jenny Chambers:</u></b> Mr. Chairman and Mr. Cuffe, I guess just being a person that was here during the legislative session and testifying on behalf at DEQ in support of the bill, I agree with you that there was some modifications to the bill and the change from advisory to oversight, there was also the addition to try to bring in more local government authority to have Lincoln County play a role, but the duties of the actual committee did not change. So, if you look at the 2015 vs. 2017 legislation, there weren't changes in the role and responsibility of the duties of the committee, so that's where from DEQ's read of it, but we still believe that it's an important group and we would have done it regardless of having legislative mandated oversight committee, but it's the duties as far as advisement based upon DEQ's responsibilities and that we can't let go of our CERCLA authority for O&amp;M; so I totally agree with the Director that there is merit and importance to this committee and the weight of any recommendations or advisement as certainly can be something we take into consideration.</p> <p><b><u>Senator Mike Cuffe:</u></b> Mr. Chairman, you know I understand by what I've said, and I'll stand by what HB 30 says and Representative Gunderson carried the bill and I think understood the intent of it. I studied it before I voted on it. I voted yes on it, I just think there is a difference and that's why the bill came about.</p> <p><b><u>Chairman Mark Peck:</u></b> I think we are all in agreement on what the duties are.</p> <p><b><u>Senator Mike Cuffe:</u></b> Mr. Chairman, one of the things that was said in the conversation with Director McGrath was that I don't know exact wording, and he can correct me, but it was that he would consider the recommendations from the committee with significant weight and it would and in most normal condition he would most likely support those recommendations or something to that effect; is that fair Shaun?</p> <p><b><u>Director Shaun McGrath:</u></b> Certainly, if, I mean we're talking hypotheticals, so I want to be clear but certainly if I am a part of the ultimate recommendation coming out of the committee, absolutely. If I am on the losing end of a vote, I don't want to suggest that I'm certainly going to still pay attention to what the recommendation is, but I don't want to give or mislead anybody by thinking that yeah; it would not be automatic.</p> <p><b><u>Senator Mike Cuffe:</u></b> The recommendation would not be automatic in any jurisdictional group. If a city council assigns a committee to work something out and they come back with a recommendation the mayor and the body would have to have or feel that they had significant reason to reject the recommendation that came to them. That's the kind of thing that I am getting at, and I think very honestly, I take the role of a legislature very seriously and I hold it on something that said we're changing the name of it for this reason, it is almost offensive for somebody else you know, for the department to come along and say well, no, no it's just advisory, it's just an advisory committee when the legislation clearly says otherwise to me.</p>

4. Agenda Item	Discussion
	<p><b><u>Representative Steve Gunderson:</u></b> The legislative intent of HB 30 was to raise that from an advisory committee to an oversight committee and I think that substantially changes how we are dealt with the agency. The legislative intent was to give more power to local government and that is the legislative intent.</p> <p><b><u>Director Shaun McGrath:</u></b> Mr. Chairman and Senator Cuffe if I may respond to one thing that was said. I acknowledge your frustration and I appreciate that that frustration is shared by others on this committee and I'm guessing within the community in Libby. I will endeavor that to be consistent here and how we speak about it at DEQ and that is we do take the recommendations from the conversations in this group very seriously and they will have great weight with our actions. I want to be clear in saying that. I also want to be clear and thank you for saying it as you did. We're not in a position of rubber stamping what comes out of her right. It's that we still preserve the ultimate decision-making authority with the Director and I don't hear anybody arguing against that, so to agree that we can be on the same page there, I think hopefully we can move past some of the frustrations I'm hearing expressed. I also want to express some frustrations on our end that I think are equally unhelpful to this conversation and that is when we hear from certain members that they do see this as a body that dictates to the department the decisions that we should make; maybe not that directly, but there certainly has been times and I'm aware from our team that some frustration that there are some that really push to make the decisions of this body really binding on the department. So, that's the place where we push back and maybe in the push back, we go too far and that's why we are having this conversation back and forth.</p> <p><b><u>Senator Mike Cuffe:</u></b> I appreciate that and Mr. Chairman if I might, I'd like to say that I did want the record to reflect that you do see it as an oversight committee and that our recommendations do carry significantly more weight than just simple advice from wherever. So that was my main concern. Thank you for the conversation and I don't think I've been the guy who tried to dictate, I may have, but if I am I guess I stand to be corrected along that line, I don't remember that I did, but anyway.</p> <p><b><u>Chairman Mark Peck:</u></b> I would really like to get this discussion closed. We've gone on for I guess three different meetings and we're all agreed that it's a recommendation, that it's not rubber stamped and there'll be times that the committee doesn't, you know, that you may disagree with the committee, but the recommendation goes to you anyway which could be a little weird but it's just the nature of the business. It's a recommendation and then you look at your statutory authority, whatever you need to do as a Director to make a decision; are we agreeing to that, can we slap the table. I appreciate the discussion, but I think the roles and duties are outlined pretty clear in the legislation.</p>

5. Agenda Item	Discussion
Response to Letter from LASOC to Region 8 Administrator – Chairman Mark Peck	<p><b><u>Chairman Mark Peck:</u></b> Have we ever received any response from them at all?</p> <p><b><u>Jenny Chambers:</u></b> DEQ hasn't seen a response from EPA or something that was sent back to us for the Libby Asbestos Oversight Committee.</p> <p><b><u>Chairman Mark Peck:</u></b> That was back in June, I think.</p> <p><b><u>Jenny Chambers:</u></b> Correct</p> <p><b><u>Chairman Mark Peck:</u></b> I don't have a copy in front of me but that dealt with some funding questions.</p> <p><b><u>Jenny Chambers:</u></b> Mr. Chairman, do you want to designate someone to follow-up with them or do you want to do it?</p> <p><b><u>Chairman Mark Peck:</u></b> I can probably just call Stan as the Chairman and see what the status is.</p> <p><b><u>Director Shaun McGrath:</u></b> Is it ok to ask a question on this? I didn't go back and reread the letter, so I apologize for that but as I recall, there was some benefit to us if our letter was the last word, right? Didn't we cash in a way that said here's our interpretation of what you just told us.</p>



	<p><b><u>Chairman Mark Peck:</u></b> So maybe no response.</p> <p><b><u>Director Shaun McGrath:</u></b> Maybe we let it stand.</p> <p><b><u>Jenny Chambers:</u></b> I think there was some language that we added that just said it's our understanding from Benevento letter that this was on EPA's position and we were just reclarifying what our assumptions were to the new Regional Administrator Sopkin to say this is our understanding of the situation and then if they don't provide a response then that assumption should stand, but we can verify that by dusting off the letter and just getting it to you Chairman and then making a decision.</p> <p><b><u>Chairman Mark Peck:</u></b> Why don't we do that; I've got it back in my office. I thought I brought it with me.</p> <p><b><u>Jenny Chambers:</u></b> It's on the website so we could probably pull it up here really easily; Virginia is working on that.</p> <p><b><u>Chairman Mark Peck:</u></b> That language is there we may want to rethink that because of no response, could be a positive. At this point in time things have moved so far forward, it will be interesting to see how much of it is even still relevant.</p> <p>Who else do we have on the phone? Representative Steve Gunderson Jenny O'Mara with Weston Solutions Ray Stout with Kootenai Valley Record</p> <p><b><u>Representative Gunderson:</u></b> Elzhon Anderson was here, but he just stepped out to take a phone call, so he'll be back on the line.</p> <p><b><u>Chairman Mark Peck:</u></b> We will make sure Elzhon gets recorded as being here. It's a little garbled but that was Ray Stout from the Kootenai Valley Record.</p>
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6. Agenda Item	Discussion	Document Link
<p>Discussion on LASOC Bylaws</p> <ul style="list-style-type: none"> <li>• Report of Subcommittee- Brett Romney</li> <li>• Motions for adoption and/or Additional Actions</li> </ul>	<p><b><u>Chairman Mark Peck:</u></b> I think everybody's got a copy of the recommendations and we appreciate subcommittee's labor and through that effort.</p> <p><b><u>Brett Romney:</u></b> Everyone has copies of what the subcommittee is presenting. The subcommittee consisted of Virginia Kocieda, George Jamison, Lisa DeWitt and Carolina Balliew. Through a series back and forth discussions starting with a draft and working that through this draft that is presented to you is the work of the committee. The committee agrees with what is being suggested with exceptions that are found in the last two pages of the PDF document that was submitted and these are areas where the subcommittee felt that you all needed to make some decisions on because the subcommittee wasn't in agreement on exactly what that language should be or the details of that particular item. So, it is the intent of the committee to look at each of these individually today and discuss those?</p> <p><b><u>Chairman Mark Peck:</u></b> I think we should walk through them so that we've got equal understanding. Is that good with the committee?</p> <p><b><u>Brett Romney:</u></b> If that is OK with the commissioner and the committee, I would appreciate any of our subcommittee members that they feel free to join in clarification or giving background to any of these items as they see fit.</p> <p><b><u>Director Shaun McGrath:</u></b> Before we go down the list. Are we all in agreement on everything else that these are the last remaining issues or</p>	<p><a href="http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/December%202019/LASOC%20Draft%20Bylaws%20with%20questions_13Dec2019.pdf?ver=2019-12-13-134508-430">http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/December%202019/LASOC%20Draft%20Bylaws%20with%20questions_13Dec2019.pdf?ver=2019-12-13-134508-430</a></p>

are there other issues within the work that the committee did? I do want to thank the committee. I think there is some really good work happened there and so we're happy to just focus on the nine items that are listed there.

**Chairman Mark Peck:** If we just walk through the nine items, it might just clear some things up.

**Senator Mike Cuffe:** I think that would make sense.

**Brett Romney:** So, we'll go through the nine and then if there are the remaining areas we could address. So, the first is section 1 mission statement and charter. The question there is does the committee believe that a mission statement or charter should be added or does the legislation speak for itself and that section would be removed?

**Chairman Mark Peck:** Personally, I think the legislation speaks pretty well for itself on what the role and mission is. I hate to even bring that discussion back up again.

**Jenny Chambers:** If it helps provide some context it was mission statement and the charter I believe was just taken pretty much from the legislation into this so that would be one document folks would go and look at vs. just having legislation stand on its own and then have the functions of the committee without knowing what the purposes of the committee is in this type of bylaws document. I think it was a verbatim cut and paste but I haven't checked it specifically, it just seems awfully familiar.

**George Jamison:** But it's actually not in there now. The mission statement is not in there, so the question that's before us is it's an unnumbered paragraph above function scope and duties and its mission statement or charter and the question is do, we want to put something in there?

**Chairman Mark Peck:** Or delete it.

**Jenny Chambers:** I thought it was subsection "I". function scope and accountability.

**Brett Romney:** No

**Jenny Chambers:** OK

**Chairman Mark Peck:** Because it is listed in here, it is verbatim out of the legislation that's in the current graph that I looked at.

**Jenny Chambers:** Because number one says whether you keep that so I just in up top says "I" and so then function is labeled "I", that's why I was confused or labeled one.

**Brett Romney:** That's a valid reason for being confused Jenny.

**Chairman Mark Peck:** Welcome to my world.

**Jenny Chambers:** So, I would want that section, personally.

**Senator Mike Cuffe:** Mr. Chairman, you said you would want the mission or charter or would you not?

**Jenny Chambers:** No, I was confused. If you look at page 2, it says "I" function scope and duties, I thought they were proposing to cut all of that out, but I see above there, there's mission statement and charter if appropriate. Its roman numeral 1, there's nothing under that so that

	<p>would have to be filled in if something else was added. It's not currently in here for your review to see what that would look like.</p> <p><b><u>Brett Romney:</u></b> If I may, I just want to take responsibility that roman numerals on the questions page , last two pages are off by one, so make sure we are referring to the right roman numeral in the draft, but in the reformat version looks like it doesn't have a roman numeral.</p> <p><b><u>Chairman Mark Peck:</u></b> The question is do you want the mission statement in there or just leave it as is?</p> <p><b><u>Brett Romney:</u></b> Right</p> <p><b><u>George Jamison:</u></b> So, it needs to be written, it's not drafted here yet., ok, thank you.</p> <p><b><u>Senator Mike Cuffe:</u></b> I'll comment that if that's basically a reiteration of the legislation it kind of clarifies it, I would think might be a good thing.</p> <p><b><u>Representative Steve Gunderson:</u></b> Mr. Chairman, I concur with Senator Cuffe. I think it might add a little clarity to the beginning of that document.</p> <p><b><u>Chairman Mark Peck:</u></b> And that has not been written yet.</p> <p><b><u>Brett Romney:</u></b> No.</p> <p><b><u>Senator Mike Cuffe:</u></b> That's a simple cut and paste thing.</p> <p><b><u>Chairman Mark Peck:</u></b> There's no such thing as a simple mission statement, that's why I avoid them like the plague personally.</p> <p><b><u>Director Shaun McGrath:</u></b> I just don't feel strongly about this either way. If we want to take a shot at doing a cut and paste to the degree that we can, I think we could certainly look at that, so maybe we could task the staff to come back with that and see what it looks like.</p> <p><b><u>Senator Mike Cuffe:</u></b> I think that's good, it's not a deal-breaker for me and I just picked up the cut and paste because that's what Jen has said.</p> <p><b><u>Jenny Chambers:</u></b> I was referring to roman numeral "I" on the functions of open duty, so that's why it was a little confusing.</p> <p><b><u>Chairman Mark Peck:</u></b> For clarity probably should entertain a motion because to put a mission statement in roman numeral so will become 1.</p> <p><b><u>Senator Mike Cuffe:</u></b> Mr. Chairman, I would basically as was said, it was a restatement of what's in the legislation based on accurate statement of what's in the legislation.</p> <p><b><u>Chairman Mark Peck:</u></b> I will entertain a motion.</p> <p><b><u>Brett Romney:</u></b> There was a feeling that a mission statement should be the prerogative of the committee to write, unless there was a direction that it was the legislation you know speaks for itself, so if the assignment to the subcommittee is to create a mission statement that is a cut and paste of the legislation to the best of our ability, I'm sure the committee would feel comfortable doing that if its starting from scratch and creating one then there was a feeling that that was your prerogative.</p> <p><b><u>Chairman Mark Peck:</u></b> The prerogative is to have it in there, but instead of the subcommittee doing something, I just as thought, did you draft something up? The subcommittee folks are busy, and would you be able to just draft something and get it to us, so we have something.</p>	
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**Brett Romney:** Is state legislation the criteria that you're looking for?

**Chairman Mark Peck:** Legislation or...maybe I'm oversensitive to the subcommittee, but I know these things can be a; just to sit down and try to hammer it out is sometimes as I think you know couple hour discussions sometimes just even get... I don't know, what does the committee think?

**Director Shaun McGrath:** Mr. Chairman, I think maybe get Tom or some of the team here that engage in that and just come back with something for us to chew on. Maybe consistent with the legislation and then a site to the statute to make it clear our intent is to be consistent. Our mission is driven by what the legislation says.

**Senator Mike Cuffe:** Works for me.

**Brett Romney:** Then section which is actually section two under membership item number ten refers to the mission statement or the charter, so we just would leave that in that reference in if there is a mission statement but we saw that if there wouldn't be one then that would be a removal of that item. The next one under section three of your draft that says four on the handout the page but its section three for LASOC structure there is a statement there, the question is if you would like to add details of the committee structure like identified positions, officers, etc. ...this is on page five section three.

**Senator Mike Cuffe:** Did we go through page 3 and 4?

**Brett Romney:** No, we didn't, they were not identified as having any issues that the subcommittee felt needed to be addressed by discussion.

**Chairman Mark Peck:** On the very back of the bylaws is the bylaws remaining questions/comments.

**Brett Romney:** Under section three there was discussion as to whether there should be definitions relative to committee positions and the structure of the committee. Some in the subcommittee felt that would be a good thing to have in the bylaws and others felt that it was unnecessary so that were presenting that to you as a discussion item as to whether that should be in there or should not be in there; necessary or unnecessary.

**Senator Mike Cuffe:** Basically, do we want to have a backup presiding officer?

**Shaun McGrath:** With just five members, I wonder if it's starting to get too bureaucratic. I think clearly having a Chairman is important and but if the Chairman is going to be absent maybe we could clarify that if there's a quorum then the quorum would elect the presiding officer and just leave it at that.

**Chairman Mark Peck:** I tend to agree with you. If I'm not going to be here for a meeting, then I can also appoint someone to chair the meeting. When I see the removal of officers, bylaws supersede appointment authority by the Governor in the LASOC structure. We aren't walking through the bylaws; we are walking through the questions. You are referring back to the bylaws, but I'm referring to this question document, question number 2 where it says removal of officers. I realize it's in a different place in the bylaws.

**Brett Romney:** Thank you Chairman, if we just stick with the one page, actually two pages, but the changes and then we'll make sure that they reflect the right spot here. We are on roman numeral 4 LASOC

	<p>structure. Do you want details of the committee structure in the bylaws?</p> <p><b><u>Director Shaun McGrath:</u></b> Mr. Chairman, I think what you were pointing out is if you go to page 5 of the bylaws that speaks to LASOC structure roman numeral 3b says in the event of a vacancy the presiding officer due to resignation or other reasons, if you're going to miss the meeting, the remaining committee members shall elect an acting presiding officer will function until the first regular meeting after the new committee members have been appointed. I think it's addressed in here; I don't know that we need any changes unless somebody thinks we need additional officers.</p> <p><b><u>George Jamison:</u></b> The only suggestion, I have is if the presiding officer can't make it, he would have the latitude to designate someone, just so it's clear to everyone.</p> <p><b><u>Director Shaun McGrath:</u></b> I think it is addressed unless you want specifically to give the Chairman the authority to designate someone. The way this reads, and roman numeral 3b is in the event of a vacancy due to resignation or for other reasons, so I think that covers the situation of vacation, then the remaining members would elect a presiding officer for that meeting. If I'm miss reading that, please advise.</p> <p><b><u>George Jamison:</u></b> I think the page five of the minutes, 3b yes, and I agree with you that's what the first part of that sentence has within it. It continues to say will function until the first regular meeting after the committee members have been appointed. At that time, the board shall reorganize by electing a president. I was talking about a temporary absence. I think that is more of a permanent change in the presiding officer, so I would think we'd want something in this said how do we deal with temporary and how we want someone designated as the presiding officer for that meeting. It would be good to do that ahead of time because there are matters of finalizing agendas and things like that but should probably be dealt with before we all show up.</p> <p><b><u>Brett Romney:</u></b> Is there agreement that 3b reads for a more permanent situation is ok with the committee?</p> <p><b><u>Chairman Mark Peck:</u></b> I would agree.</p> <p><b><u>Senator Mike Cuffe:</u></b> I am good with that; I think that's fine; I think it's great. Mr. Chairman, you made a reference a little bit earlier and I see now I'm on the right page, but it does talk about removal of officers and I'll have to dig back through here but I marked that as it where it talked about removal of officers and as you mentioned, you're appointed by the county commissioners. I'm appointed by the President of the Senate; Steve is and there is a final read it where I thought it was a removal but its recommendation for removal.</p> <p><b><u>Chairman Mark Peck:</u></b> When I look at question 2, it says if committee decides to write a mission or charter which we have, then this statement applies and should stay and that's the question before us.</p> <p><b><u>Brett Romney:</u></b> Item number 10 where it refers to abiding by the terms and conditions of the mission statement but so that wouldn't be in depending on the mission statement but this thing were now discussing about decision making is actually we took a little step down and bypassed this question which if you'll allow we'll come back to in a second. Let's finish out the discussion on the decision making.</p> <p><b><u>Chairman Mark Peck:</u></b> My understanding, just for clarification for everybody, what we are doing is looking at the bylaws remaining</p>	
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questions and comments. We are walking through each one of those individually and then we'll go to other questions that folks have.

**Brett Romney:** If you were to look at that page that you're on Chairman under decision making 5b we skipped over the one that you're referring to above, we'll go back to it. My understanding is you will let me know if I'm accurate that we agree with the way that its worded in under decision making be in the event of a name of a vacancy that would be a long-term thing. We're adding to that that if it were a short-term absence of the presiding officer or a one-time event that they would be authorized to designate a temporary replacement for that one meeting. If you go back up the page where it says LASOC structure and then you have a whole paragraph in parentheses other identified positions and officers beyond what you see on page five roman numeral 3.

**George Jamison:** I sense from what I heard earlier was that we probably don't feel the necessity to have 3 or 4 officers.

**Brett Romney:** Thank you, I missed that. If we move to the last page, the remaining questions comments under decision-making C reads this in the current draft by Eliza say approval of recommendation to be forward to DEQ. Recommendation requests shall be approved by a majority vote of the entire LASOC membership. The question for the committee is there is a question of whether its ok that it be a majority vote or should it be a unanimous vote as well as entire LASOC membership has a question, if a member were not present at a meeting, would they need to be, would they have to have be given the opportunity to vote. Those were the questions that the subcommittee did not know the direction to go with.

**Senator Mike Cuffe:** What it says is if you have a simple majority of the membership which would be three, I think then you could hold a meeting but if you were to approve recommendations to be presented to the Director, you'd have to have at least three yes votes in order to move it forward whether there's five there or whether there's three.

**Shaun McGrath:** I believe that language goes one step further Senator and says it has to be a majority, but all five members have to have voted, which suggests might be problematic. It would give any on us a veto power if we want to refuse to vote.

**Chairman Mark Peck:** These decisions that we're voting on in this committee are not binding, so it's a recommendation. I don't know if I want to put restraints on other than normal Robert's Rules of Order; majority vote.

**Director Shaun McGrath:** The conversation we had to Senator Cuffe's question at the top, I agree with you, the committee should feel unconstrained to provide the advice that you think the Director needs. That said I think it would be helpful if we said something to the effect that it is the expectation that the members will strive for consensus because that where the committee is going to have the most impact, most influence. And then to make a recommendation forward it still required just majority of a quorum.

**Jenny Chambers:** In the future that may make a difference because the DEQ Director may not always be on the committee. They may choose to provide a DEQ designee like in my position, then you would provide the recommendation. If I didn't agree with that it still might be the recommendation that I would then bring forward to the Director to make a decision so it's just because we are starting this committee in we feel it's really important he's on there as a committee member.

**Senator Mike Cuffe:** Two questions, one you can have a meeting with a quorum of majority of three, what is the majority it takes, is it a majority of that quorum which is two or is it majority all three which would be three of five. A majority of those present, which is two. I think we should allow for, just as we have Representative Gunderson on the phone, he could vote by phone. I think we should also be able to have proxy votes the same as any other legislative for any of our legislative committees whether in session or interims we can always have proxy votes.

**Representative Steve Gunderson:** I concur with Senator Cuffe, that proxy voting should not be prohibited and especially if we are going down that path of trying to have a quorum and a unanimous vote. We're not doing to get there unless we have that proxy capability and it works in the legislature. We should be able to make it work here.

**Chairman Mark Peck:** If we go down that allow proxy should there be some formal way that if I'm not going to be here and I'm given a proxy vote on an issue that I send an email or so that there's something for the record that proxy was actually whether it's an email that's been my experience in the past I had somebody proxy vote for me I would send an email authorizing that vote so that there's something on the record that they're asking you to vote.

**Senator Mike Cuffe:** They could have you because the discussion may influence how you vote, and I may say I trust you Mark, I want you to vote my proxy according to the discussion as you see fit. I don't have to say in the beginning vote yes or vote no.

**Chairman Mark Peck:** You just say I am authorizing Director McGrath that's who I would go with the proxy vote.

**Director Shaun McGrath:** I think typically with the proxy vote there is also the opportunity to say I will vote I'd like to be recorded as a no vote on this amendment or I give my proxy to Senator Cuffe.

**Chairman Mark Peck:** Either way.

**Representative Steve Gunderson:** I concur.

**Brett Romney:** We are saying that item number E on five where it currently says that the action proxy voting is prohibited, we are saying it is not prohibited and the LASOC member will communicate

**Chairman Mark Peck:** Will communicate to the Chair through email

**Senator Mike Cuffe:** Instead of saying not prohibited, just say allowable

**Chairman Mark Peck:** But will be communicated to the Chair would be the standard way so there's an email sent to the Chair and the Chair can say yes you are authorized and then it's submitted as part of the record or whoever is designated person is, sitting in my place.

**Brett Romney:** So, item number C to be clear then am I to understand that recommendation the way it reads approval of recommendation before DEQ recommendation request be forwarded by majority vote of the LASOC membership meaning three if there's five, three minimum.

**Senator Mike Cuffe:** Did you hear that Steve?

**Representative Steve Gunderson:** Affirmative, I concur.

**Chairman Mark Peck:** Maybe I didn't hear right, could you repeat that.

	<p><b><u>Brett Romney:</u></b> Recommendation request shall be approved by majority vote of the LASOC membership, the entire LASOC membership.</p> <p><b><u>Senator Mike Cuffe:</u></b> Three out of five, now that's recommendations. There might be some other kind of an action that we take that wouldn't necessarily amount to a recommendation that could probably pass by simple majority.</p> <p><b><u>Director Shaun McGrath:</u></b> What I believe that the proposal on the table is that three members could move a recommendation forward you would have to have a quorum and all three would have to vote and hopefully the other two would submit proxies.</p> <p><b><u>Director Shaun McGrath:</u></b> May I ask a point of clarification; are we in agreement to have language in here that speaks to we strive for consensus.</p> <p><b><u>George Jamison:</u></b> Not that I disagree with what you said here about basically three votes but how do we write that.</p> <p><b><u>Chairman Mark Peck:</u></b> It takes three votes to carry and move a recommendation.</p> <p><b><u>Brett Romney:</u></b> If you look at item D, there are two statements. There is an or in the middle of that, so the subcommittee had two different views on this one is representing the first statement the other was represented in the second statement.</p> <p><b><u>Jenny Chambers:</u></b> The example is the letter that you guys agreed to send to the EPA that we are trying to get a response from EPA on, it was discussed, it was unanimous that this committee would send a letter to EPA asking for a response, but if you didn't vote unanimously then is it really the voice of this committee to send that letter because each entity that you represent could send your own opinion letter or interest from your perspective of the entity that you represent so that's the question that's on the table. Will you want to send correspondence and voice comment as an oversight committee or does each of your entities that you represent allow you to take that role independently of this committee and have a stronger voice or a voice that can still provide comment.</p> <p><b><u>Director Shaun McGrath:</u></b> What I would suggest is that the committee was created to really advise, give recommendations to DEQ and when we are now looking outside the committee becomes to some extent an advocacy organization. We are trying to influence beyond what our real scope was which I don't think is necessarily inappropriate, but what I do think is appropriate in that case is to be an a unanimous vote and I'll be blunt, I mean if DEQ is going to be represented outside of our conversation, between the committee and DEQ, if we are writing a letter to EPA, I want to make sure that DEQ is aware of it and then I am for it and so that would be one concern.</p> <p><b><u>Chairman Mark Peck:</u></b> So then how would this hypothetically speaking, there's a letter that you guys want to send to the EPA, you support it, but the other four members don't support it, but you send the letter anyway. The DA on DEQ letterhead and in order for us to know if we decide we disagree and we want to give a different opinion to the EPA, we would do that as individuals, or I guess we could do it as a group and sign each other's. I understand your need to be able to stay autonomous and not be driven by, I mean you have to do what you think is right for DSQ and really can't have your hands tied by this.</p> <p><b><u>Director Shaun McGrath:</u></b> Thank you Mr. Chairman, I think that's part of it, but I think that's true for all of us.</p>	
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**Senator Mike Cuffe:** Any of us can probably make a statement they say but we want disagreed with the more absolutely members of the PSE The minority of one may write a letter same with the Supreme Court, they write a minority opinion. There may be some things we would like it just to be noted in the letter; this was passed by a four to one vote dissenting vote Director McGrath said they disagree for whatever reason could be that way or we will simply write a letter separately.

**Director Shaun McGrath:** I thought we were talking about if we are going to write a letter on the letterhead from the committee from the oversight committee so that my suggestion is that it be a unanimous vote and anything less wouldn't be able to send as an oversight committee letter.

**Chairman Mark Peck:** But that does not preclude you as DEQ or us as Lincoln County from writing our own letters.

**Senator Mike Cuffe:** So conceivably then you would wind up if we could not come to a unanimous agreement here, then you would roll back to a letter from the commissioners, a letter from the House, a letter from the Senate and a letter from DEQ. Maybe George would want to write his own letter.

**Chairman Mark Peck:** When I first read that, I had issues with it.

**Brett Romney:** The difference between the two statements is one requires a unanimous vote for a LASOC written thing like the letter, the other does not.

**Senator Mike Cuffe:** In a way, the vote of one overrules the vote of four. If in order for it to go out on letterhead it has to have unanimous vote, but the dissenting vote can still send, is that what is saying, the majority vote does not get to send their letter, but the dissenting vote does get to. Is that what it's saying?

**Chairman Mark Peck:** No, nobody gets to on behalf of the committee.

**Senator Mike Cuffe:** Any of us may submit on behalf of their own representation outside of LASOC.

**Chairman Mark Peck:** But that way if Lincoln County disagrees with a letter that the legislators and the Director agree with that saves us from, that means you guys can write your letters as DEQ and as Senator Cuffe, but you can't make it look like Lincoln County is in support of or vice versa; that's my understanding.

**Senator Mike Cuffe:** We could write a letter on this issue as a member of the committee, but not representing the committee.

**Brett Romney:** The way I believe these two differ is one allows for a letter to go out only when its unanimous and the other doesn't allow a letter to go out and the other allows that it can go out if it's not unanimous. In either case, you can still represent your own entity by writing your own letter.

**George Jamison:** I think we probably agree on a lot about what's being said here, but I think sloppy in this language here is we have been using the example of letter and there's one place in here I think that it does say letters, but we have got other things in there about written feedback, recommendations which that's a whole different thing and comments and different things like that so we need to tighten up this language. If this is language, we want that pertains to letters that would be sent out by this committee then let's say that. And what we are

talking about and in that case is ok, but this is kind of sloppy or you know in both wordings and we've got to be careful that because you got the word recommendations in there and we have just had this discussion about recommendations. So, let's be very specific about what that's going to apply to. It bothers me that the word recommendation is in there and we are already confused. The next meeting, we won't remember half of this and I just want to make sure we tighten up what this applies to; I think it would help.

**Brett Romney:** So, is written feedback good language or take it out?

**Chairman Mark Peck:** Any correspondence or official position of this committee outside of its relationship between us and DEQ, the committee & DEQ, falls under that. I don't think that should just be written. The recommendations from the committee to DEQ requires the three votes.

**Brett Romney:** If we were to reword this with specific LASOC official positions or correspondence requires a unanimous vote and we take out the laundry list of following feedback recommendations, letters, comments.

**Senator Mike Cuffe:** Essentially, we might be saying some things we agree to disagree on, and we cannot take a position on those as a committee.

**Brett Romney:** If you turn to the last page item F which would be found if you are wanting to do both top of page six bylaw amendments. The way that reads, again the use of majority vote and unanimous voting in that statement and that seemed to be a recurring theme of the subcommittee as not knowing when things should be unanimous or by majority vote.

**Carolina Balliew:** For background on this, we were waiting to see if based on the discussion previously about a unanimous vote for now, the correspondence or official positions. If that bylaw is enacted that's a unanimous vote that requires it. The question that's proposed within this beside normal Robert's Rules of Order to amend bylaws should a bylaw that requires unanimous voting require unanimous voting to change it.

**Senator Mike Cuffe:** I'm struggling a little bit here, it's kind of like we are talking about what we don't know what we're talking about and what are the kinds of things that we might even be talking about.

**Jenny Chambers:** Hypothetically, you just agreed that you are going to modify the official position that corresponds to be we only take that as a committee. But what if you have somebody that voted no and said you guys are all wrong, I want a stronger position. So, then you wait for the next week, he's not there and you vote to change that bylaw to make it the way you want; that's what we are trying to avoid. There won't always be a hundred percent agreement.

**Senator Mike Cuffe:** The main things we are talking about are expenditures of money, probably between EPA, state money and other state money or whatever we call these three funds. Why would we not be unanimous or why would we have this either way. Why would we require unanimous or why would we not require unanimous?

**Jenny Chambers:** There's going to be situations that potentially will come up, maybe 5 years from now, where there might be some scenario that comes up in Libby. There may be discussion on if it should be funded in operations and maintenance. We would require a recommendation and the Director would consider it. Or a policy change

that would change the O&M Manual and ARP is having a hard time maintaining staff, then we want to bring to this committee a change is how to implement because its not working through the ARP because there is a lack of staff and we need to hire...I'm just thinking

**Chairman Mark Peck:** That's why I go back to we already said that for recommendations it takes three votes. I don't see where this is any different.

**Jenny Chambers:** To change that bylaw, go back to that section, you want to have three votes that can change that to be unanimous or do you want less votes? So, this is just what kind of votes do you want to have for the bylaw changes; that's what the section is.

**George Jamison:** What's the expectation on what kind of vote it takes to adopt these bylaws if we ever survive this. If we all agreed on this right now, how many votes do we need right now (three), and why would that be any different for an amendment of bylaws than what we use to enact this to begin with. I'd like to stick with normal Robert's Rules. If we have one little piece that requires a unanimous vote, just doesn't seem logical.

**Chairman Mark Peck:** I would say we have professional people working on this and we cannot nail everything down, but I have a lot of trust and I think it should be consistent. I agree that if it takes three votes to approve the bylaws then why would it take unanimous, that's the question. I understand the other side of it, but at the same token, only meeting once a quarter, it would take the year to get all five people together to actually make a minor change to the bylaws or make it consistent with what our statement on recommendations is.

**Jessica Wilkerson:** I'm not sure exactly what the current statement is, but there's two pieces of the Robert's Rules that are really important, so one is just the majority vote and the second is that there needs to be prior notice before the current meeting that the vote takes place that ensures that the communication is sufficient that there won't be any unexpected vote.

**Chairman Mark Peck:** Maybe we need to put that in there that before a vote taken then it must be properly noticed.

**Virginia Kocieda:** On page eight roman numeral nine, its titled amending the bylaws. This is additional language that can clarify, and I think this was one of the suggestions that you guys made. It's intended to clarify and make sure that it's listed what can be amended, who can amend and so on. The question is to consider section roman numeral 9 and decide if this is something you want to keep here or amend or remove

**Senator Mike Cuffe:** The third line from the bottom says is required by a unanimous vote and I thought we just dealt with that so I would amend that.

**Virginia Kocieda:** So, that can be changed to majority.

**Brett Romney:** We were going to be more specific by stating three votes in the previous sections.

**Carolina Balliew:** This is additional language that's clarifying who, how for amending of the bylaws. More specific to the power of doing it.

**Brett Romney:** That's ones on our decision-making as a way to make a decision on bylaws and this has its own section.

**Chairman Mark Peck:** What we are looking at is numeral number 9A, leave it as written but change the language to be the three votes versus unanimous and remove that piece and make a consistent with the other voting.

**Virginia Kocieda:** And to combine it with what we just discussed with bylaw amendments on page six paragraph F

**Brett Romney:** Just putting them in proximity so you have the way amendments are introduced and then the way they're voted on or passed.

**Representative Gunderson:** I am happy.

**Brett Romney:** Conflict of interest which begins in the document on page nine roman numeral 11. The question before you is, does the committee feel there needs to be this section on conflict of interest or is it inherent in who you represent that you already have conflicts of interest statements that would apply.

**Carolina Balliew:** An additional option to that would be to have the section and then we can just specify or do citations of the specific conflicts of interests that you adhere to.

**Chairman Mark Peck:** Doesn't the state ethics have a Director?

**Director Shaun McGrath:** Mr. Chairman, that is correct. There is a ethics obligation for all boards and commissions and I'm comfortable with what's in here if we want to simplify it. I do think we should have at a minimum a reference to the ethics obligation that we have under the policy.

**Brett Romney:** Would you like it included in here or do we abbreviate this document by removing it and adding what the Director just suggested.

**Chairman Mark Peck:** It seems a lot and there is already ethics verbiage and I agree we should have it there, but I don't know that we need a full page on it.

**Senator Mike Cuffe:** Mr. Chairman to a certain extent that item A almost applies to any of us living in Lincoln County, doesn't quite, but its close.

**Jenny Chambers:** I think it's more let's say there was on your property you wanted to have sampling done and you were one of the refusals or a family member of yours is a refusal and this committee said no we are not going to fund money of this.

**Senator Mike Cuffe:** We would simply refrain. In the legislature we have a couple of instances one where some people simply stand up and acknowledge they might have a conflict and they still vote. There are some who abstained from voting because of that and that's left as a matter of choice. You will not be removed from the board, you would simply abstain from voting on that and if a person mistakenly somehow says employee you know or even if my son moved to Libby and bought a piece of property that I might not even know he was buying and I voted that would not be a conflict of interest because I didn't know although afterwards it might look like that. But I don't think in general I agree with it. I don't have an issue.

**Chairman Mark Peck:** It's hard to just spell all that out and that the issue with ethics is that there's basic principles but sometimes it's very fuzzy. I think the main thing is acknowledging up front.

**Senator Mike Cuffe:** Item B shall be referred to DEQ and the presiding officer and that seems reasonable if a person made a simple mistake.

**Jessica Wilkerson:** From a legal perspective, the bylaws are really a public way of establishing your mode of operation and your priorities and especially in small communities, but generally conflicts of interest are the ways that we stumble the most when we are trying to do good work. I would just encourage you that as much as it takes up room in this document, it's a good thing to include with specificity just because it provides you with assurance that when you are making those decisions, you are doing it with as much guidance as possible and that when the public is looking at the document that is your guiding principles, or is your bylaws that they know you are thinking about this and that this is a priority. So, there should be kind of a assumption of best intentions that goes along with it. And it does help with transparency quite a bit.

**Director Shaun McGrath:** That makes sense to me, I don't have any problem with that and am comfortable with having this in the bylaws with one question. Do you know if we looked at the state policy for boards and commissions to make sure we are consistent with what the state obligation under that policy is? That would be the only caution I would give.

**Jessica Wilkerson:** I haven't double-checked that. I haven't been part of the conversations to this point, but that's certainly something that we could do immediately.

**Senator Mike Cuffe:** Looking at number 4 under D. What's puzzling me there a little bit is campaign contributions; that's one thing I might point out. Is a guy going to run around saying I sit on this committee, does this guy have a property or is he a real estate agent? Do I have to go and check every, you know?

**Jenny Chambers:** We can look at the boards and commissions and other advisory groups based upon if there's some standard language that's are included in here that we are not conflicting, one that comes in mind is a sage-grouse advisory council that was appointed. I know that does have members of the legislature that are also directed to serve on that committee, so we will just double check to see if they have something on conflict interest that maybe we can utilize and then make sure it doesn't conflict with the governor's office recommendations.

**Chairman Mark Peck:** I don't disagree with anything that's in there. Being a county commissioner, small county and you are related to 80% of the population, it's always delicate. It just seems sometimes you can paint yourself in the corners and be too descriptive.

**Senator Mike Cuffe:** I don't anticipate any conflicts. Now that's resolved the questions that come up within the subcommittee.

**Chairman Mark Peck:** So, we are looking into the state ethics. If we start trying to address all the rabbit holes, sometimes you just have to move forward.

**Senator Mike Cuffe:** I thought we were going to walk through the thing from the beginning, but I have marked a few things. Item four at the top of page 3, LASOC will be fiscally responsible with funds for administrative duties, follow state statutory, and consider responsible and transparent funding on all recommendations. And number 9, DEQ is fiscally responsible for requirements for use of funds, and long-term budgeting under O&M. LASOC sends all recommendations for response. Under membership number two, any members make the following commitment to attend regular meeting, receive training to review and

	<p>comment on action items not limited. Can you help me to review and comment on action items not limited to documents within their purview they come before LASOC, submit timely comments and feedback, what does that mean?</p> <p><b><u>Jenny Chambers:</u></b> My take of that when I read through this initially , not being part of the subcommittee, but working through the document, there was a lot in the legislation as far as this oversight committee that indicated this committee would assist with preparation and dissemination of reports, reviewing documents and providing comments. I read that as being actively engaged in what's going on in Lincoln County as it relates to the Libby Superfund Site. You may need to review documents for instance the ICIAP. It's just control assurance plan that went out for EPA public comment. We did not bring that DEQ and ARP didn't bring that to this committee for review or conversation, but you have a duty as a committee member to know what's going on in your community based upon the Libby Superfund Site. There could be a remedial investigation or proposed plan for operable unit three, you may want to be aware of that and review that as a committee member as well as a citizen of Lincoln County. But we may or may not choose to bring it to you for what your comment is specifically or what your recommendations to DEQ is on that as a committee, just because there's a lot of stuff going on throughout the year and this committee only meets once a quarter. But you might have it we believe I think reading that is that you are saying you might have a duty to still be aware of what's going on based upon the Superfund so that's not within the purview that came to the committee.</p> <p><b><u>Senator Mike Cuffe:</u></b> Is this not saying that I'm guilty that I don't know what I don't know?</p> <p><b><u>Carolina Balliew:</u></b> Senator Cuffe, that is not the intent. It's just to further illustrate that the commitments of the committee members should holistically know what's going on and what's out to the public so you can better serve on this committee.</p> <p><b><u>Senator Mike Cuffe:</u></b> I guess that's fair; I can commit to that. I don't want to be hung for it because sometimes things come, like right now a lot of my emails get filtered and if they get filtered it may be some of this stuff. There are four newspapers in our county and if it happens to be in one of them and I don't get that one.</p> <p><b><u>Carolina Balliew:</u></b> Just to follow up that that, one of our agenda items typically is going to be updates for the site or what's going on in operation and maintenance and then the expectation as a committee member would be if you have further questions or you need to know more than to follow with us or the county accordingly to see what's going on.</p> <p><b><u>Senator Mike Cuffe:</u></b> In reading we are collaborative in the end respectfully. And conduct themselves with integrity, respect, honesty and credibility and approach all meetings with highest ethical standards or professionalism. Do we really need all that in there? I was appointed to come to this committee whether I'm respectful or not or whether I want to wear a sweatshirt and smelly tennis shoes or cowboy boots. I'm still commissioned to come to the meeting. I just wonder do we really need all that stuff.</p> <p><b><u>Chairman Mark Peck:</u></b> It just seems like a lot of this is intuitive, I mean as an elected official. I don't disagree with the content; we need to do those things and be that way, but I trust the membership to be that way.</p>	
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**Jenny Chambers:** I don't think it's always a product just for you as committee members. It's also for the public, so we will post this on our website. It's for the external stakeholders as well.

**Senator Mike Cuffe:** How about item number 7...handled in a responsible manner. Information, materials provided by regulating agencies, particularly draft elevated in-house use.

**Chairman Mark Peck:** My take on that is if there's documents that are being worked on within DEQ, I don't know that we need to follow release of those documents per policy of DEQ. As committee members we shouldn't feel free to run out give this to the public.

**Jenny Chambers:** That's exactly it; you may get approached from a citizen or reporter for a working draft document, you might have that available, you just hand it to them, but our request would be that you would direct them to DEQ since this committees administratively attached to DEQ. We have a Just FOIA process where they could provide the request of that information and then we would then share it. Last year there was a lot of questions from legislative audit division in regard to this committee whether we were meeting regularly, whether there were bylaws, whether there was minutes, how much money, how much was spent. We at DEQ answered those questions on behalf of the committee because your administratively attached and provided that information. Does it mean that you wouldn't then in turn get asked questions as a committee member you just may not directly provide something.

**Senator Mike Cuffe:** Can we get a copy of that audit report?

**Jenny Chambers:** I don't know if it was an audit report, there wasn't an audit report. They always do a financial audit of DEQ every year and the committee did get DEQ's audit. There were no findings on behalf of the Libby Asbestos Oversight Committee because we identified and addressed all the questions. I'm just saying they do periodically ask questions and then we provide that information, but there were no findings.

**Chairman Mark Peck:** I think maybe clearer way is just address that any sharing of information needs to be within the policies of DEQ and the state process for freedom of information. Just because somebody asked us for something, we don't have to hand it over. There are processes where they need to go through to get that document. That would be a request from the department saying this is an internal document we are giving you, please do not share if somebody wants it. We have them follow the procedures to come to DEQ to get it.

**George Jamison:** I pretty much agree with all this and I understand it, but one of the things that puzzles me a little bit is whether or not that runs afoul of our own requirements. For examples, in my case since I'm on the Board of Health and in Lincoln County, Mark's a Commissioner. We do report back to our respected groups, we carry information back therein and I read this like I'm ok with the level of reporting that we give back to our groups, but at the same time I wouldn't want to be overly encumbered by what we can discuss with them and particularly because unlike the EPA process, so much of what we do in the county, state level, this is all basically public. Their processes to get the information we have to, but I read this I think will does that really apply. Does this restrict our ability to report back to our groups and have open conversations about things and receive guidance, that sort of thing? I would suggest that would be inappropriate if it did.

**Jenny Chambers:** That's your decision. I guess then we would just modify this so that we would know at DEQ that any information we

	<p>present to the oversight committee would be something that...we wouldn't be able to have working drafts that are under further conversation unless it's really labeled and characterized as such. Mark may bring some stuff back to the other commissioners, but you know George is a citizen and we hopefully having a public process where he's representing the citizens that DEQ provides, he's not taking it back to another entity, so it's not a big deal, it just was a matter of making sure that we are aware of the working drafts and then they may get modified and make changes that we don't want it to go too far away with knowing that it is not a final committee document that everybody agrees.</p> <p><b><u>Chairman Mark Peck:</u></b> I think when that request is made by the department which is what you are suggesting that this particular working document, just make it clear that this doesn't. I think that would preclude me from going back and giving a briefing but I don't know because I have an obligation to this committee as well and so I'm with George as long as it doesn't impair, but again that goes back to this committee is administratively attached to DEQ so if there are documents from this committee that are decided that needs a little more sensitivity, then we know just to refer. If we get a citizen that says I'd like a copy of that well here's the number or whatever, give DEQ a call and go through that policy in order to get that document, but if its already on the website...</p> <p><b><u>Senator Mike Cuffe:</u></b> I think the only thing I might add that as elected officials appointed to the committee, we are still elected official and have an obligation of transparency to whomever. And hopefully I can say working draft and that I can understand somebody wants more information, I can try to refer them back.</p> <p><b><u>Jenny Chambers:</u></b> Or attorney-client privilege, just say you talked a lot about getting some kind of legal advice on certain situations, maybe the DEQ's attorney or attorney general may provide a memo to you as committee members that would be attorney-client privilege so you may not want to release that. This was supposed to be broad spectrum.</p> <p><b><u>Senator Mike Cuffe:</u></b> I don't know how Steve feels about this, but I may also want to get opinion from legislative council. I think the rest of it that I had marked and outlined was on decision-making on LASOC structure. I am for decision-making; I think we have covered that proxy voting; majority and I was going to ask a question about parliamentary procedure. We said Robert's Rules and I wondered when is it that we operate under in the legislature, not Robert's Rules, Mason's Rules. There is not a whole lot of difference there. Do you have any issues that way Steve?</p> <p><b><u>Representative Steve Gunderson:</u></b> They're very similar, there are some differences like not having to second a motion.</p> <p><b><u>Senator Mike Cuffe:</u></b> That's the main thing I remember but I'm good with Robert's Rules.</p> <p>Removal of officers under G misconduct or neglect of duty, but we don't have any definitions of those, and I don't know that we want any but it's a recommendation to be removed and we would defend that recommendation to whoever appointed us. I would assume there would be some kind of due process prior to you contacting the president's senate and say I want that guy anymore he votes no too much or whatever. What would be those grounds but must be passed by two-thirds vote so I guess that kind of covered my notes.</p> <p><b><u>Chairman Mark Peck:</u></b> Two-thirds vote to remove somebody...</p> <p><b><u>Jenny Chambers:</u></b> Its statutory obligated who can sit on this position so it would be a recommendation you would provide to whoever appointed</p>	
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	<p>you and then they could choose to say no, I disagree with the recommendation of the committee. We are going to keep Senator Cuffe in that position.</p> <p><b><u>Senator Mike Cuffe:</u></b> I am the only one that meets the criteria; there is only one Senator in Lincoln County.</p> <p><b><u>George Jamison:</u></b> One of the things I have noticed through this document through our minutes and through our discussions and different things is we talk about meetings and yet we have had conference calls and I'm concerned that we not fall into a trap of being sloppy about this because a conference call is a public meeting and we've got formats for meetings and just as we are it reminded me of that but I want us to be sure we are careful as we go forward that to me a quarterly meeting simply is recognition that at least once a quarter we are meeting our obligation but I don't see that a quarterly meeting per se is anything other than just the fact that we have got to meet once a quarter. I don't think those meetings are any more special than a conference call and I am concerned that we don't in the course of our stuff here, but meetings and the bylaws that we don't lapse over into some distinction between a conference call meeting because we can perform the same functions in a conference call meeting as we can sitting here and Helena together.</p> <p><b><u>Jenny Chambers:</u></b> DEQ doesn't agree or doesn't disagree. So you do not want to have a defined term that says a meeting can be a in person meeting, a skype teleconference meeting, a webinar meeting, a conference call, a meeting is a meeting, it can be using the technology we have.</p> <p><b><u>George Jamison:</u></b> I just see some flies in the term instead of the word meeting, I see the word quarterly meeting and I think that's an artifact from the very beginning before we started having something there.</p> <p><b><u>Jenny Chambers:</u></b> There's a distinction just because statutorily and this is when I go to the audit questions and some of the legislative requests, we are mandated to have at least one meeting per quarter when conference call, one webinar when Libby Asbestos Superfund Oversight Committee meeting at least once per quarter January through March, April through May so we do have to have at least one meeting per quarter. There could be more than one per quarter. There can't be four in one quarter and none in the next quarter because that's in violation.</p> <p><b><u>George Jamison:</u></b> My concern is we have to meet once a quarter and so we can say that's a meeting, that's satisfied that quarterly frequency obligation but there's not one of those meetings in that quarter that is the quarterly meeting that's what I want to be sure we are careful about that they don't get called out as special meetings because they're all special.</p> <p><b><u>Senator Mike Cuffe:</u></b> They are all meetings of the group. You are required to have one every quarter. You can have as many as you want, you still have to follow all the rules and regulations.</p> <p><b><u>Chairman Mark Peck:</u></b> I think we are all agreeing.</p> <p><b><u>Jenny Chambers:</u></b> Chairman just for process the ones you made some comments on to make some edits, there's some that we have to do some drafting like on the mission charter statement, checking the conflict of interest provisions, is the goal to do that between now and the next meeting that will fall within the next quarter so there's a couple months' time to make that determination. I was worried about if you want to have a meeting next week, we wouldn't be done but enough time that you could come and you could look at the whole document, make a vote that this is approved and we can put a date version on it.</p>	
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	<p><b><u>Chairman Mark Peck:</u></b> Are these changes you're comfortable making without...</p> <p><b><u>Brett Romney:</u></b> I'm not comfortable making without the ability if I need to confer with the committee. I would seem that you would want these changes back in the final draft quote-unquote form well ahead of your next meeting so that you all have time to process any questions. Is your intent to vote on those in the next meeting then?</p> <p><b><u>Chairman Mark Peck:</u></b> First is the holidays, say January 15, is that enough time?</p> <p><b><u>Jenny Chambers:</u></b> That's not enough time for the conflict of interest and the mission statement time drafting but they can aim for that. End of January would be better.</p> <p><b><u>Senator Mike Cuffe:</u></b> Mr. Chairman, I don't think we did it in the beginning and I am trying to learn everybody's name and I don't know most of the folks, it takes me a while to soak it in so could we just have all the folks introduce themselves again.</p> <p>Jenny Chambers Carolina Balliew Jason Rappe Jessica Wilkerson Lisa DeWitt Tom Stoops Brett Romney Virginia Kocieda</p> <p><b><u>Chairman Mark Peck:</u></b> We have moved off bylaws. What we got left is O&amp;M Planning Efforts, Federal O&amp;M Funding Shortfalls, City/County Board of Health request for expanded review period on public comment, OU3 Libby Bankruptcy, Public Comment, Discussion and Next Steps. We are not going to get to it all. What do we all want to do?</p> <p><b><u>Jenny Chambers:</u></b> Some of those lengthy conversations, maybe you want to wait till you have more time to discuss it at another meeting and some of the shorter stuff we could probably just give you updates.</p>	
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7. Agenda Item	Discussion	Action Items
OU3 Libby Bankruptcy Jenny Chambers and Jessica Wilkerson	<p><b><u>Jenny Chambers:</u></b> It's just a briefing to give you an update with my legal counsel Jessica Wilkerson. WR Grace filed for bankruptcy around 2003 and then they reorganized a little bit with the debtor of 2008 and basically DEQ reserved claims at OU3. DEQ at the State of Montana, so it's also the natural resource damage program through Department of Justice. We thought we just reserve those claims in 2008 time period thinking that it's going to be way down the road when we got to remediate OU3 and we would know where things were at that WR Grace would want to get out of those reserve bankruptcy claims. Last year it surprised us when they basically want to petition the bankruptcy court to get out of bankruptcy court basically and dissolve all their (WR Grace) claims from any outstanding records on those court filings. It took us by surprise in June of 2019 they found that petition asking the bankruptcy claim to reduce the limited bankruptcy claim and basically get the out of the contingency of what's needed long term. We think it's premature because we don't have a record of decision at OU3 and we are still working through the circular process. They want to move forward with that, so we are trying to build our case on what that liability is to the State of Montana based upon bankruptcy claims. It is only for the OU3 site.</p>	

	<p>It excludes the site wide one because that was settled with the 55 million claim that with the 504 million claim the EPA got and the 5 million that we got does the State of Montana for operation of maintenance which is definitely not enough money based upon the bankruptcy, but that's in the past. We are just trying to ensure that we maintain that. I was going to have Jessica talk about that claim and then what the next steps are with the mediation.</p> <p><b>Jessica Wilkerson:</b> WR Grace filed as Jenny stated an objection to our remaining claim and asked the court to allow it to continue but on a very limited basis with the assumption that EPA is going to do a sufficient cleanup and that WR Grace is going to remain solvent for a long enough to be able to complete the remedy and comply with its O&amp;M payment obligations. We don't know what's going to happen. We are still a long way from a ROD at OU3. There are some really big issues that all of the stakeholders involved are talking through. There is quite a bit of potential liability for both the county and the state that's on the line and so we've responded in objection to that objection asking that our claim before we fully allow to remain and we've agreed to work on articulating maybe what a more specific proof of claim will be. In that process we've agreed to engage in mediation with WR Grace. That mediation is strictly confidential and so there's not a lot I can say about that process right now or what our proof of claim might be, but it's really important for the committee to know that we are working really hard to protect the interests and the risks that of the State of Montana and particularly the people of Lincoln County and based on what we have learned through the remedial investigation and the ongoing feasibility study process, there a lot of really important conversations that we need to have about what kind of risk we are trying to protect Lincoln County from.</p> <p><b>Jenny Chambers:</b> Currently we don't have an obligation to the State of Montana or Lincoln County doesn't have an obligation because it's a PRP Lead site. It's a responsible party lead site. If they were to go bankrupt and it went to an orphan share and then a fund lead site, they call it because there's not a responsible party that can pay the ticket. We are concerned about remedial costs which is the state's on the hook for ten percent of whatever that would be whenever that outcome occurs or a hundred percent of operation maintenance very similar to the conversations or having of the site-wide that we want to make sure that we have our liability protected because we don't know what that final decision is or what that remedy's going to be long-term. We are trying to build our claim on either one of those scenarios that it is a robust remedy and that we ensure that we have EPA's financial assurance to make sure that's being maintained but if it's not the remedy that we want to see from a state based upon protectiveness then do we have the liability protection to do a remedy that we would concur with or have enough money for O&amp;M on either O&amp;M scenario. And some of this leave the dam in place, don't remove the dam, reconvert the creek; each one of those different scenarios and alternatives are being evaluated and they all have some O&amp;M costs associated and some are higher and some are lower and there's upfront costs so it's kind of balancing that out. We want to bring it to your attention was one to give you oversight into understanding that that's going on as well and then the Natural Resource Damage Program is also looking at economic impacts from restoration damages that's also getting built in some of the claim that's going to help Lincoln County with similar claims at OU3. Also, to let you know that it is requiring some staff time, some technical assistance like with Weston to help us put this claim together and I wanted to make it transparent. The only funding, I have available to do that is that 5 million settlement so there is a note on that budget sheet that says we are using some of that money for this purpose but in the attempt that we will recover that money back. Basically, whatever the finding is for the claim. If we</p>	
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	<p>were to settle with a OU3, we get money back at OU3. We will pay back the site-wide four through seven five-million-dollar fund and then whatever's remaining is set aside for OU3 and the other part is that for five. There are no other dollars to protect the state from this filing from WR Grace.</p> <p><u>Chairman Mark Peck:</u> You said that the county has liabilities</p> <p><u>Jenny Chambers:</u> You could have long-term impacts.</p> <p><u>Jessica Wilkerson:</u> That was imprecise Mr. Chairman, but we are worried about long-term impacts and any risks the county might face.</p> <p><u>Chairman Mark Peck:</u> Will we have the opportunity to be involved in those discussions?</p> <p><u>Jenny Chambers:</u> No Chairman, you will not.</p> <p><u>Chairman Mark Peck:</u> Who determines what our risks are?</p> <p><u>Jenny Chambers:</u> You will be part of the conversation when EPA chooses a remedy for a proposed plan and you will be able to have input on that. They are looking at having this settlement or we will go to court on the bankruptcy proceedings probably before EPA has a remedy. That's OU3 only. The forested area and the mine site.</p> <p><u>Jessica Wilkerson:</u> The timing is tricky, so basically, we are taking the circular process and trying to push it into the bankruptcy process. We are interested in maintaining a proof of claim that protects the state. That's the entire conversation. It doesn't, it shouldn't, and we are not intending for it to disrupt the conversation between EPA and the state and what the county's input about what the remedy will be.</p>	
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8. Agenda Item	Discussion	Action Items
Update on O&M Planning Efforts- Lisa DeWitt	<p><u>Lisa DeWitt:</u> We are working very hard to try to prepare for the onslaught of operations and maintenance which is going to get transferred to the State of Montana from EPA in April. At this point the institutional controls implementation and assurance plan is out for public comment and review. If you haven't looked at it yet, I would encourage you to pull it up, take a look. If you have comments, please submit them. The comment period goes until the end of this year. Beginning in January the operations and maintenance plan will come out and will be available for public comment until the end of January and I would encourage you very much to take a look at that as well. Submit any comments you'd have and if you have general questions, please do let us know. These are ultimately EPA documents and it is going through the formal public comment process with that. That's where those things are. Internally within the working group we are doing a lot of work which I think George and Jason and Virginia, and I can attest to and trying to get all the background things put into place. There are a lot of things we need to do putting processes together on how all this is going to work getting all the cleanup and remedial data into DEQ hands and out of EPA because they will no longer manage that data so we want to ensure that's still available when people call so ARP and DEQ can have access to that and provide information to people that need that. There's a lot of work we have been doing, a lot of things going along, and I think we are working along pretty well. We will be working with ARP to get some funding agreements put in place so that the funding mechanism will move from EPA and then funding for ARP and the scope of that in O&amp;M as opposed to during cleanup. Will work on defining that as it shifts. I would anticipate that as that time comes closer that as DEQ we will likely have some sort of public outreach going on to let the community know that EPA is stepping out</p>	

and at this point in the process it's DEQ's responsibility talking about what people can expect and how things may change for that.

**Senator Mike Cuffe:** When I first came on board in January, we had set some deadlines we had to be ready for; that was a big one. Are we kind of at that process where we thought we needed to be? Have we kept up with our timetable somewhat?

**Jenny Chambers:** I think we are pretty close. There are a lot of things that are not necessarily final where we can put a check in the box and say yes, this is done, but I think we are moving well along in the process to have the things that are going to be absolutely crucial in place and I think we are all aware as this goes on that things will need to change and we'll need to be agile in how we move forward to meet the changes that are coming. I'm feeling pretty good.

**Virginia Kocieda:** I agree with what you are saying.

**Senator Mike Cuffe:** The follow-up, these may be day after the fair kind of questions, but in my world I'm still trying to catch it up but one thing, and it goes back to some of our recent discussion but it's enough for today, but these are questions maybe we could follow-up next meeting. One, the issue of guarantee everything would be cleaned up before EPA was completely done and there have been a number of discussions on that. I would like a follow up on some of the money of how that can be. If you guarantee you're going to cleanup everything, but she says she doesn't want her place cleaned up but now she died ten years ago and there's new owners today or ten years from now. It seems to me that the guarantee was made that everything would be cleaned up at no cost and that there should have been some money set aside someplace to take care of that when the day came. It may be the car runs into a house and busts open, makes a spill or something else happens where a piece of property is sold and developed and those kinds of things. I would still like a little follow-up on that and if the money was set aside or if it wasn't, what these other monies might be used for. I'm still trying to get my head around that. The other was in talking with different people and some have been involved in similar kinds of issues that in fact, one guy said to me, will you guys were pretty foolish you should have gone for other additional things like economic development money on things that have been a very negative impact for your community. And maybe it's the day after the fair but maybe it's worth asking that question now. What about those things as far as the negative impacts on a community because of what we've been through and will continue enduring for a while? Tied into that, I know somebody close to me that considered relocating to Libby with the US Forest Service and he read their website and he felt a very scary description of you moving to a very hazardous area and he didn't want any part of that. If that's still true and I don't believe it is true, but somebody needs to contact the forest service and say we think it is a safe place and one of things I talked to the Kootenai National Forest Supervisor myself about this and actually his wife had concerns about him taking this post as Kootenai National Forest Supervisor for these reasons and I believe I don't remember it may have been this forest supervisor said during the fires of 2018 up Rainy Creek hill, they were dipping out of the river, they had guys our grubbing and fighting the fire up and down the hill, but what I didn't realize is they had sniffers on them and they tested, pulled the samplings in and found it very negligible which I thought they'd concern about disturbing duff and bark and no smoldering kind of issues. I thought that would be a bad one but they found very little on those sniffers so I'm saying can we quit scaring people away for something that is not a real hazard now or do we still considered enough hazard that we want to keep running people away.

**Chairman Mark Peck:** I think we are constantly putting the right information out but there's those that still post the doom and gloom and I don't know how we prevent that. I think the messages and the Libby Marketing and Chamber of Commerce...we have had a lot of issues in the past; the hospital not being able to recruit physicians and unfortunately that's why I told the Inter Lake I will grant you an interview one last time on this issue and I don't come ask me about it because you guys keep bringing this stuff up and we've got to go back through the hole and then here comes all the internet stuff and so please leave us alone and let us move forward. I think was my message.

**Jenny Chambers:** That was talked about two or three years ago at one of the OU3 meetings and it was approached with forest service then just to just say please quit that messaging and help to craft something different. We will contact the liaison for the forest service and help them through some of it and mention it again, and we have talked with them about it in the past as well.

**Chairman Mike Cuffe:** And maybe some follow-up in regard to we should have talked to EPA about economic development stuff. In Libby, there was so much concern about the ongoing health and justifiably so. For quite a few years that was the big thing and the second big thing was how do we clean it up and there wasn't as far as I know there was not a great amount of question challenging saying we deserve there should have been some economic development or other kinds of things.

**Director Shaun McGrath:** First I would ask if you follow up with forest service and it's still up there that we then follow up with EPA because that should be a sister agency to sister agency conversation. EPA has said that the air in Libby is now as healthful or is anywhere else in the state and they can ask the forest service to take that down. In terms of the economic impacts. I do not believe EPA has much authority in the sense of trying to get additional funding out of WR Grace. EPA's jurisdiction is around environmental protection, not economic development and it's probably a different conversation with economic development agency EDA but I think there's limited avenues through superfund.

**Jenny Chambers:** Unfortunately for some of those other entities like it would be restoration. The circular allows for restoration damages to be covered if a community has damages associated with those activities or cleanup has damages based on that. It could be for augmentation or stream changes with the restoration, but it can also be economic loss to a community and that really would be through the circular authority for superfund under the restoration provisions. In this case it's a natural resource damage program jointly working through with DEQ and the State of Montana and then they would look at other agencies department of commerce, department of natural resources, conservation, department of revenue and they would pull together the economic loss for the restoration damages for all restoration damages. The concern or trouble is I don't know the history and I wasn't here then, when the State of Montana came late to the table with EPA taking the lead of the bankruptcy filing in 2003 or in 1998 when they got the full blown 504 million for the cleanup. State of Montana only got five million for operation and maintenance long-term of the sitewide impacts associated with that community. I can tell you that 5 million is certainly not enough from that bankruptcy claim and DEQ would not have said just give up five million. It definitely doesn't factor in other restoration damages or economic loss or other restoration habitat impacts based upon that damage from WR Grace in that previously bankruptcy claims.

**Chairman Mike Cuffe:** Part of what's prompted me to bring this up is to talk about the OU3 that WR Grace is petitioning to close out under their bankruptcy obligations so this might be our last opportunity to take a shot that way and if there is any precedent and maybe through that Atlantic Richfield in that area some of this stuff may have been addressed.

**Jenny Chambers:** Senator Cuffe, it's been looked at, but there is exclusions on that previous settlement that says you cannot go sitewide, you have to just look at the damages associated with OU3. There is some job loss potential, impacts with logging and forest management. I don't know all of their claim, maybe fishing or tourism that's a habitat loss. I think it's being evaluated. It's not going to be in the same dollar amount that Braddock ritual was for.

**Senator Mike Cuffe:** A lot of good producing people, particularly people of an age that a community needs to have a thriving economy and an ongoing economy.

**Representative Steve Gunderson:** I have a question for Lisa, I don't know how far off base this is, but it bugs me that we're separating comment periods about the O&M Planning and ICAP? Why aren't we consolidating this because it seems like one would not work without the other so why are we commenting separately on them. Why are we waiting and doing is as a single comment?

**Lisa DeWitt:** Representative Gunderson, in the working group that was a large discussion went on for long time, the reasoning behind it right or wrong was the idea that it was a lot for people to look at all at once. With that, you are correct, they do work hand in hand, and it is why they are going consecutively. If there are comments that come up with one reviews the O&M Plan and they come on the IC Plan, I can assure you that those are ones that are going to be included as well because we will be going through that and they're going to need to work together.

**Representative Steve Gunderson:** So, we're not going to close the door; it's going to be left open as we finish one and start working on the other. We can always go back and revisit if we get a comment made from the other document.

**Lisa DeWitt:** If you get a comment made from the institutional control plan as a result of going through the O&M Plan, I would submit that as a comment on the O&M Plan. I know that both the documents are going to be finalized at pretty much the same time, but that is the way to get your comment put in. Those two documents do have to work hand in hand and as a group we understand that.

**Representative Steve Gunderson:** I just want to make sure of that; it seems like it didn't make sense to have two comment periods when they are documents that have no conflict, but they actually dovetail into each other.

**Lisa DeWitt:** There's no argument with that but this is how it rolled out and that's my workaround for you.

**Representative Steve Gunderson:** We are about 45 minutes past when we were going to end this, are we going to continue or label some of these discussion till the next meeting?

**Chairman Mark Peck:** The funding shortfalls is critical that we have some discussion on that. We have public comment and Board of Health motion. I don't want to push this much further, but that's why we need to get targeted.

	<p><b>Senator Mike Cuffe:</b> Virginia will give her a copy of a letter that I wrote concerning ICAP and the following documents and includes part of what Steve said. The other thing is, I think there should be public hearings. I don't care if it's a two-hour afternoon, whatever it is and I understand people may not attend a lot of these, but I think we need to open the door for that opportunity.</p> <p><b>Lisa DeWitt:</b> I will acknowledge that and at DEQ recognize this as well and we've been talking to EPA about the possibilities of doing that in January and letting it be about both, so we are still working on that and I'm hopeful.</p>	
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9. Agenda Item	Discussion	Action Items
Federal O&M Funding Shortfalls: Consideration for State Funding	<ul style="list-style-type: none"> <li>• Subcommittee Report – Bret Romney</li> <li>• General Discussions</li> <li>• Motion for Recommendations for State Funding and/or Additional Actions</li> </ul> <p><b>Brett Romney:</b> You have two documents that were given to you. One is this flowchart that's called the reimbursement eligibility flowchart. The subcommittee was tasked with using this flowchart in discussions to identify areas where funding with EPA monies would not be used and that was completed. There were six areas where based on the flowchart were identified as areas that the EPA would not fund. A report was an email to you Chairman Peck back in October with just those findings. The second document that you have is this matrix. I want to be clear that this matrix is not the work of the subcommittee, but rather was my attempt after the work the subcommittee did to get a better understanding of this funding situation because there were certain things with the flowchart that didn't necessarily differentiate between things like sampling vs. cleanup costs and different types of costs and I just wanted to get a better understanding of the entire picture. So, this matrix is the result of a conversation with Mike Cirian and EPA and I get in including the six areas that were identified from the flowchart, differentiating those by sampling vs. cleanup costs and then based upon Mike Cirian's conversation where EPA would either fund or not fund sampling and cleanup. The matrix just represents my effort to better understand this and identifies EPA's position according to Mike Cirian. I'm looking at some of the things that they've put in writing, so in summary from my point of view, the question before the committee is where there are hard no's or possible no's where would funding come from. Would that be the state monies recognizing there are different buckets there, would the owner be using their own monies in those situations. If you were to count those out, there's six situations that were identified by the subcommittee. There is an additional three situations that aren't represented clearly on the reimbursement flowchart. Our feeling as a subcommittee is that we were done with in terms of what was given to us as assignment to be able to say these are the areas that we feel you as a committee need to have the discussion regarding funding.</p> <p><b>Director Shaun McGrath:</b> The matrix that you put together with Mike, it was just the two of you that was the conversation. Did Mike refer to any broader EPA policy or specific EPA policy that was guiding his responses or this was Mike reacting, responding to your questions that EPA would pay for this or would not pay for this.</p> <p><b>Brett Romney:</b> It was probably a little of both, more the latter would be more accurate. When I would ask him about the sources which was by the way that subcommittee talked a lot about sources, and we agreed we wouldn't spend a lot of time trying to dig in find those sources because we didn't feel that would be productive. Mike would</p>	<p><a href="http://deg.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/December%202019/ReimbursementFlowchart_v4%20(002).pdf?ver=2019-12-13-134522-807">http://deg.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/December%202019/ReimbursementFlowchart_v4%20(002).pdf?ver=2019-12-13-134522-807</a></p> <p><a href="http://deg.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/December%202019/Funding%20Matrix.pdf?ver=2019-12-13-134457-807">http://deg.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/December%202019/Funding%20Matrix.pdf?ver=2019-12-13-134457-807</a></p>



refer to things within the EPA binders as he called them, and he said if you want me to find them, I'll find them. This is my understanding and that there's information there, but I did not press him. We did not talk specifics.

**Director Shaun McGrath:** I'd suggest here is that some of these funding questions are going to be important policy questions back to EPA and I have great regard for Mike, he's wonderful. At the same time, I do think this is probably a conversation with whether it's Betsy or the Regional Administrator Greg Sopkin. I think this matrix is helpful because it starts to hone in on what were the right questions to ask but I would suggest there may be some additional work that needs to happen to really understand where EPA may come down on some of these questions.

**Jenny Chambers:** If that's something you would want to have this elevated at EPA to see if there's concurrence on some of these different scenarios, I could take it on behalf of DEQ and see if there's coordinated call between DEQ and EPA at the higher level to see if that's the same position that they land on based upon those conversations before we really know if these are yes's or no's in that solid fashion.

**Chairman Mark Peck:** I've always been a proponent if you are going to tell me no, tell me why. This has been my frustration all along.

**George Jamison:** You've hit a real nerve here because we've got the documentation to prove it. We have tried for almost two years to get to answers and clarity on yes or no on these things and if you're going to tell us no, tell us why. Something we can point to, so that among other things, we might choose to take issue with you about interpretation or something and there is no such thing. I don't have a copy of that letter with me, but maybe Lisa and others can help, but the letter that Stan Christianson wrote, I called the recommendation letter which had a string of things listed as we recommend this, we recommend this, about the use of funds; was very confused by that but because we'd been waiting on this moment of clarity to come and our understanding from our viewpoint was that moment of clarity was coming with EPA and DEQ working together to arrive at that clarity. I didn't see it and I asked Mike about this and is this the letter that is supposed to answer those questions and that's intended to be their response. And the word recommendation for example is in their recommendation because the way he explained it to me is if we write no or put absolutes in there then it would tie your hands completely and we may want to preserve some flexibility that you all could have in the future. I understand that and I asked him, I don't understand which pot of money this applies to you making recommendations about what the state can do or does this pertain to the federal dollars O&M dollars and he said no, it's the latter, it's the federal money. We have written letters; we have done all kinds of things from the board of health to the commissioners and repeatedly in meetings to the point of being really annoying with people and I'm one of them. I absolutely know that, and I've been told that, and I understand why, but we can't get that clarity and God Bless you if you can, but you probably won't get it in your lifetime. Here's the other frustration I have. They lit the fuse on windows in O&F and O&M starts then we've got this sacred date of April 1<sup>st</sup> which I take issues with, but we're all working toward that and in the meantime we've got to have something that we can react to because this group needs to consider recommendations to you and I was prepared to talk more about this today but when you look at that list, if that's a list of no's, then are we ever going to get to why and rationale, probably not but if that's what no is then let's put some value to that and let's say what's this really amount to. I've done that and I can tell you that the value on this and the unfunded areas are very

small. If you take that list they say is the list, they also say that's what they're going to write up if they put that in the O&M manual in section four, for funding has moved its way down to what EPA's prepared to write up and they're working on that to say these are the no areas. So, believe me the idea of having clarity on this, I wish we had it a year ago. We were asking for this a long, long time ago, but in the meantime, we've got to do something here where we can move this program forward. I think we can fill in those gaps without any problem with state money and then that can allow you concurrently to have your discussions with them about why this is really no, just don't make the list of no's any larger. I'm sorry for the frustration here, but I couldn't agree with you more and I don't know how you get that but we've got to do something to bring some closure to this and it not going to be done quickly.

**Jenny Chambers:** There is a risk to that if you do push the envelope on some of these issues, we are going to get a solid no vs. just saying ok, we'll take the guidance that you provided now based on where we are at. We will address that then maybe every single year for the next 20 years, we will modify our cooperative agreement request to EPA and try to get some of these no's to turn to yes's and just year after year after year apply for those different scenarios because right now we are trying to determine what those scenarios are without knowing what we are spending money on or need to spend money on.

**George Jamison:** I think that's a very good observation and one of the things that come to me is I look through this and try to get my arms around it about a recommendation and information I bring to this group and I hoped we could have done it today but we've run out of time. But many of these things there may be some of these no's on here that never come up or they may not come up for years, but what this does if we could reach some agreement about look this is not a big thing dollar wise, these things that Jenny, you never reported on, Tom did today, the funding there based on what I'm seeing is more than enough. Seems to be very adequate for these gaps and this could allow you as you get one of these columns that hits no, we go ahead and deal with the property owner because we need to keep the program moving and they can't be hung up with six weeks of indecision about things. We go ahead, things get funded through the state and then if we get one of these items that's an opportunity for you to talk to EPA about specifics of that particular set of circumstances on that property. I share your frustration, but I think there's a way to move forward on this that helps facilitate all that.

**Jenny Chambers:** So, are you concerned as committee members that if we did do something like that, that would be precedent setting. I am worried about my neighbor got whatever work done ten years ago and now you're telling me you're not going to do X because you have got a solid no to EPA funding and then you're not going to expend any more state dollars to do that even though you did for my neighbor then years ago. I just caution getting too far out to fill those holes in and setting the precedent for that community that we can't sustain long term.

**Chairman Mark Peck:** I think that's why it's important to look at even the land use changes, the cost of testing on those. Lincoln County isn't Spokane County, we don't have subdivisions just ravaging the—I don't know how many we have approved in the last year, but maybe three of any significance and we are in the biggest boom we've ever been in in quite some time since the dam came in so I think those are the realities. We need to statistically look at, we know how many homes we have been treated for lack of better terms, so we can start associating possible future costs. If they remodel and they need a removal done. I don't think those numbers are—we have 220 refusals, and if all of those,

we figure what 8 to 10 percent actually come back needing, so we got 20 places that haven't been--and I understand the precedent thing, we deal with that every single day and everything we do at the local level and that's just something we have to deal with. If something changes and we have to make a decision that's something that I as a county commissioner just have to say, we used to plow your road but we can't afford it anymore and that's incumbent upon us as I think the local government folks that are making those decisions with you that we have to stand by those. The numbers are not that overwhelming to me, it's not the big scary beast. I think with some time we can refine those. What do we do with someone that just refuses to maintain; we have ordinances already in place if someone refuses to treat their property and we know it's a health hazard, there is a process with the county health officer. We do it with dust, with junk, health hazards, burned down buildings. I think that's why it's important that we are able to sit down and have these more detailed discussions, for us to share in more detail the way we see the world that way. I'm not personally opposed to putting a fee on a developer for \$100 a lot for ARP to go out and do their review and then that goes into a fund if it's not needed for anything on the budget. Those types of things to where there is buy-in. I know there's a value to having buy-in from the citizens into what we're doing and when you look at that cost of paying for testing, is it the absolute end of the world if it doesn't get paid for, probably not but you're not going to have the buy-in and what is the value of that buy-in. There's more than just straight up and I just want to put things into perspective real quick on this whole issue so that as we review it, I want you to understand where and why the citizens of Libby are coming from the way they are and probably why we seem like we are buttheads. I'm going to go back to Christine Todd Whitman and her promise that we would not have to pay anything, because she said that's why I'm pleased to announce today that the EPA is taking an unusual legal step to protect you from future liability whether or not we end up listing Libby on the NPL. We will be providing homeowners with legal guarantees called a no action assurance that will protect them from EPA's ever seeking to have them assume cost of cleanup. Similarly, local businesses in Libby that did not know about the hazards of vermiculite before November 1999 and that did not profit from its use will also receive this guarantee. Written information about these guarantees will be available. She said this action is our way of showing you that when we say we are not going to make you pay for cleanup, we will back that up in writing regardless however of the ultimate decision concerning the NPL list and EPA is committed to working with our partners to see that all necessary actions are taken to protect public health in the living community. When I say all necessary action that very well may include offering Libby residents' options of asking the EPA to remove vermiculite from their homes. The point is that the whole thing is here, but she was very specific about the guarantees and the early years of the cleanup that was a very common theme from the EPA. At some point, in the mid- 2006, 2007 2008, somewhere in there, all of a sudden it started to disappear and roll into the background. But that right there is why people feel the way they do, and we are not that far from being able to make that happen. There's a lot of good news in this chart if it is right in my opinion, it could be a lot worse. I think that we can get almost all the way there if we really sit down and look at what's leftover that they're not going to pay for it's not the scary monster. But that right there from her, is why Libby feels the way they do about it.

**Director Shaun McGrath:** Thank you Mr. Chairman, I think you framed the conversation well and I've been hearing about Christine's statements since I was at EPA and in fact, I might have heard it first from you then. I guess notwithstanding her comments there was a tension in this conversation and I believe that tension occurs from the fact that there are limited resources and we are looking at a planning

horizon that we don't know when it stops and so there's a tension in having to manage limited resources in a long-term way. There's also tension on the other side from real demands for those resources from your neighbors, from you constituents, from you family. What DEQ sees in a bid and our role for these issues were EPA is saying that's a no, we're having to grapple with prioritization, not everything's a priority when you have limited resources. To your point about snow removal and I guess I would say today, I think the conversations that have been started here are good ones. I know that my team has been bringing me up to speed on kind of the different buckets that we're starting to see. I think it's a good conversation that we are having but I have to tell you that from DEQ's perspective, I have some policy calls coming up that we're going to need to make and I need to check in with others and there's going to be some tough decisions I'm afraid and so more conversation I think needs to be had. I think we are having good conversations; I actually think this flowchart is a constructive way to start to think about how we can address these issues as they arise, but I'll leave it at that. I think we have a lot more conversation that we're going to need to have. I think there's some tensions that are going to divide us at times because you're getting pulled from being right there on the ground, we're going to get pulled a different direction at times from trying to manage a long-term limited resource but I have every confidence that we'll work through these tough issues.

**Chairman Mark Peck:** I think we need to make sure those tensions aren't between us because its outside things that are driving what we are both doing. We are not making this stuff up on either side, so I agree with you. I think our next meeting which I think may need to happen because I want to get these bylaws done. Maybe we look at a little earlier, instead of March, we look into January or first of February. We'll need the 1<sup>st</sup> of February before the bylaws are done. But to really have a sit down and look at things across the board because right now we just all kind of sit back and wring our hands and go we've got to pay for this into perpetuity and how are we going to do these things. I think it's incumbent upon the EPA is not going to do it. We have been down that road and I don't think necessarily it's their job to do. I wish it would have been more forthright with these things, but they weren't and that's where we are at. But I think being able to sit down and just really lay out the cases, so we understand each other and why we are doing what we are doing. I think is usually 90% of it. If we don't know what the other side is doing we automatically assume and that's why these were so important, I told Mike if you're going to tell me no, just tell me why, give me a reason, then I can move on and go to the constituents and say we can't do this because it's against CERCLA, it's against this, give me some help, but just telling me no? I think they deserve to tell us why it's no and if I don't understand why it's so difficult for him. He's told me this story where I could find this for you, but it's up here in all these binders in the cloud. Well, then go find them. I mean that's where I'm at with it. The fact that he said he could do it, that's a huge step forward because we have never gotten that. I usually just get the deer in the headlight look or he gets upset with me and I get upset with him and then nothing gets done. I just wish there was more transparency on this and more just tell us why because there are probably reasons for it. This to me is Mike's opinion until I see something otherwise. This is a great document because it lays out what the issues are and at least we have yes or no and it's a great place to start and compare with the flowchart. I think we are in a good place with this.

**George Jamison:** Let me make a comment, as kind of a confession in a way. All through this, being deeply concerned about the protectiveness of and the question of protectiveness and so forth, if you're not uniformly treating all the properties the same and basically going back to the property owners don't incur any cost and I think

	<p>that's vitally important, but I from the beginning I've had this deep concern that the things that don't get funded and the property owners allegedly might get stuck with, it was going to be a huge amount to the point that it was unworkable and I know we've got these state funds and thank goodness. But it slowly began to realize it as we finally, especially saw this kind of list and we keep working through the flowcharts and things like this until I just finally sat down and tried to put some numbers on this. It is not that big a number and I was amazed and I was glad that I wrong earlier to believe that it was such a huge thing and another way to put that as I was actually surprised when I look at yes's and the conversations that most other people have been part of these too with Mike and so forth. I'm actually quite surprised there's as much yes here, I'm very surprised at that. I look forward to sharing with you my efforts to put some numbers on this because I have to tell you when I got done with it I couldn't believe that I've been worried about this stuff this long, this is not a big deal. The no's on there are not a big deal and I thought they were a huge deal before. I think we have a good path forward so anyway, I'm not usually and optimistic person.</p>	
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10. Agenda Item	Discussion
Public Comment	<p>There were no public comments.</p> <p><b><u>Chairman Mark Peck:</u></b> Really appreciate the work of the subcommittee, I know its grinding work, but you gave us what we need to make decisions and that's what you were tasked to do, and we appreciate it.</p> <p><b><u>George Jamison:</u></b> I want to thank Brett for his contribution, and he was of great help to us.</p>

11. Agenda Item	Discussion	Action Items
<p>Discussion and Next Steps</p> <p>a. Date of next meeting</p> <p>b. Summary of action items.</p>	<p>Next Steps: Subcommittee work</p> <p>Action Items:</p> <p><b><u>Chairman Mark Peck:</u></b> Early February for next meeting giving time for bylaws. I would really like to have those done and over.</p> <p><b>Motion to adjourn.</b></p>	