



Water Policy Interim Committee

62nd Montana Legislature

SENATE MEMBERS

BRADLEY MAXON HAMLETT--Chair
DEBBY BARRETT
SHARON STEWART-PEREGOY
CHAS VINCENT

HOUSE MEMBERS

WALTER MCNUTT--Vice Chair
PAT CONNELL
BETSY HANDS
BILL MCCHESENEY

COMMITTEE STAFF

JOE KOLMAN, Lead Staff
HELEN THIGPEN, Staff Attorney
KEVIN MCCUE, Secretary

MINUTES

Approved September 10, 2012

June 20, 2012

Meeting Room A
Red Lion Inn
Kalispell

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

SEN. BRADLEY MAXON HAMLETT, Chair
REP. WALTER MCNUTT, Vice Chair

SEN. DEBBY BARRETT
SEN. CHAS VINCENT

REP. PAT CONNELL
REP. BETSY HANDS
REP. BILL MCCHESENEY

COMMITTEE MEMBERS EXCUSED

SEN. SHARON STEWART-PEREGOY

STAFF PRESENT

JOE KOLMAN, Lead Staff

KEVIN MCCUE, Secretary

Visitors

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

CALL TO ORDER AND ROLL CALL

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

AGENDA

COMMITTEE INTRODUCTIONS AND STATEMENTS

00:00:30 Sen. Vincent introduced himself and said he was pleased with the turnout.

00:01:30 Rep. McChesney related his experience with water issues and thanked those present for their attendance.

00:02:45 Rep. McNutt recounted his history with the WPIC and explained the purpose of the committee's investigation of exempt wells.

00:05:00 Rep. Hands welcomed the opportunity to address the exempt well issue that remains unresolved and meet with members of the public who have a large stake in its resolution.

00:06:18 Rep. Connell spoke on the critical role of water in the lives of all Montanans.

00:08:35 Sen. Barrett said there was nothing more vital to the people of the state than water and told of her experience on the Reserved Water Rights Compact Commission (RWRCC).

00:10:17 Sen. Hamlett said drought has illustrated how much Montanans depend on water.

OVERVIEW OF EXEMPT WELL STUDY AND PROPOSALS

00:12:06 Mr. Kolman gave a brief history and current definition of the domestic well exemption. Mr. Kolman explained the state's prior appropriation doctrine and how the exemption has changed over the years. Mr. Kolman explained that the current exemption placed a limit on wells of 35 gallons per minute and 10 acre feet a year as long as it is not part of a "combined appropriation." Mr. Kolman said that the law does not define "combined appropriation" but leaves said definition to the administering agency of the Executive Branch to define. Mr. Kolman said that "combined appropriation" has been defined for the last 20 years as two wells that are physically connected. Mr. Kolman explained that the current study of exempt wells had been mandated by HB 602 (2011). Mr. Kolman explained each of the bills drafted in collaboration with interested parties

(EXHIBIT 1) (EXHIBIT 2) (EXHIBIT 3) (EXHIBIT 4) (EXHIBIT 5). Mr. Kolman reminded attendees that public comment will be accepted until the WPIC's final meeting in September 2012. Mr. Kolman also invited those in attendance to examine the WPIC's draft study report (EXHIBIT 6).

PUBLIC COMMENT ON EXEMPT WELL STUDY AND PROPOSALS

- 00:23:11 Cal Scott said when rights are infringed upon, as may happen with these proposals, it is the public's responsibility to act. Mr. Scott asked the WPIC to keep in mind that the Flathead has a dearth of ground water. Mr. Scott said he believed the 35 gallon per minute limit may be overly restrictive for some subdivisions and individual property owners.
- 00:28:41 Russ Crowder, American Dream Montana Chair, agreed with Mr. Scott and pointed to the crowded Whitefish train station, where people are going to travel to North Dakota for work.
- 00:32:59 Kurt Hafferman, former manager of the Department of Natural Resources and Conservation's (DNRC) Kalispell Water Resources Office, said that the issue at hand is legal availability of water, not adverse effect. Mr. Hafferman suggested a bill be passed that charges by the acre foot as a way to bring attention to the issue.
- 00:39:20 Jeff Larson, Vice President of the Montana Environmental Consultants Association (MECA), spoke in opposition to the elimination of exempt wells and suggested the issue be dealt with regionally.
- 00:43:04 Glenn Wehe, Columbia Falls, asked Mr. Kolman to provide a summary of the draft legislation.
- 00:44:30 Gary McHenry said it does not make sense to regulate water as we are not running out of it.
- 00:45:26 Dennis Thornton said over-regulation was responsible for Montanans leaving to work in North Dakota and that the number of commercial wells being inadequately administered was minute.
- 00:50:53 Sen. Verdell Jackson said the DNRC management of the water right system is a mess. Sen. Jackson spoke to the issue of legal availability and said people with non-consumptive water rights have all the water. Sen. Jackson said the DNRC has water rights for water that does not exist. Sen. Jackson said there is no lack of water and that the Montana Bureau of Mines and Geology (MBMG) says Montana has so much water human impact will never be visible. Sen. Jackson said regulation should be done locally, not statewide.
- 00:57:42 Clarice Ryan, Bigfork, said that those who control water are able to control people. Ms. Ryan suggested that the proposed regulations would lead to further regulations.

(Break)

- 01:17:36 Rita Hall, owner of a personal hydroelectric system, said her system is not covered by water rights and told the WPIC that it is very complicated to file for water rights.
- 01:22:48 Bill Gardner, a drilling contractor, said that the quantity of water underground was difficult to determine and that the Montana Water Well Drillers' Association (MWWDA) believes policy should be determined based on science. Mr. Gardner said rules should be based on regional conditions and not be applied to the entire state.
- 01:26:13 Russ Miller recounted his experiences with forest management plans and said "management" would mean increased government control of access to resources until there is no more access. Mr. Miller said problems exist in confined basins and that they should be scientifically studied and regulated.
- 01:39:39 Chris Schustrom, who runs a business based on tourism, said anything done to degrade water quality will degrade tourism. Mr. Schustrom said he was concerned that water quality could be negatively affected in areas with large concentrations of exempt wells. Mr. Schustrom said LC 8004 constitutes a common sense solution that would limit the number of homes in some subdivisions and leave others alone.
- 01:44:35 Erica Wirtala, Northwest Montana Association of Realtors and Realtors of Montana, voiced support for the exemption as it stands today. Ms. Wirtala said scientific research indicates exempt wells are not causing water shortages or adversely affecting senior water rights holders.
- 01:47:50 Roy Beekman, a general contractor, recounted his experience with his own exempt well and praised its cost effectiveness. Mr. Beekman asked the WPIC to leave the exemption as it is.
- 01:50:42 Tom Hopgood, Montana Mining Association, explained how the small ground water exemption is critical to mining exploration efforts. Mr. Hopgood urged equitable permitting and spoke to the difficulty navigating the permitting process to start a mine in Montana. Mr. Hopgood said changing the exemption would lead to the unintended consequence of impairment to mining and other industries.
- 01:54:56 Laverne Sultz said he saw no existing problem with the exemption, but that he did see a problem involving abuse of exempt wells in permitting large subdivisions in concentrated areas. Mr. Sultz said the DNRC definition of combined appropriation is not adequate and needs to be updated to reflect how much water is being pulled out, not how many wells are doing the pulling. Mr. Sultz said the state needs to work on ways to decide how many wells can be put in a concentrated area. Mr. Sultz expressed support for LC 8000 and LC 8004.

(Break)

- 02:10:48 Mayre Flowers, Citizens for a Better Flathead, asked all in attendance to be wary of misinformation. Ms. Flowers said that "one size" regulation would not fit all not only in the state but in the Flathead as well.
- 02:21:58 Dan Short urged consideration of LC 8000 and LC 8004. Mr. Short said although he was not opposed to exempt wells, the state cannot stick an infinite number of straws in a glass and expect the quantity and quality of the water in the glass to stay the same.
- 02:24:39 Donna Thornton said she was not in favor of any further regulations being placed on the people of Montana. Ms. Thornton said she had seen Montana's timber industry decimated.

COMMITTEE QUESTIONS FOR PUBLIC

- 02:36:33 Sen. Vincent asked Ms. Flowers, regarding LC 8004, how many maximum lots per subdivision her organization would like to see allowed. Ms. Flowers said she did not yet know that threshold and it would depend on lot size.
- 02:44:52 Rep. McNutt spoke with the aim of dispelling the worries that the WPIC aims to impose regulations. Rep. McNutt said the WPIC has been looking at exempt wells since 2005 and will examine perceived problems. Rep. McNutt said that it is state law, not the DNRC, which is responsible for complications regarding controlled ground water.
- 02:55:46 Rep. Connell said the WPIC does not desire for there to be negative impacts on compact negotiations with the Confederated Salish and Kootenai Tribes (CSKT).
- 03:02:04 Sen. Hamlett noted that the state is spending a lot of money on the Ground Water Investigation Program (GWIP) and urged exempt well owners to send in information to better inform the issue.
- 03:06:22 Sen. Vincent recommended those concerned for the timber industry write their U.S. Senator or Representative and recommend they sponsor a bill to remove the NGO provision of the Equal Access to Justice Act (1980).
- 03:08:03 Rep. McNutt said citizens need to be better educated regarding well registration.
- 03:09:47 Sen. Hamlett thanked the attendees for their comments and the meeting was adjourned.

Adjourn

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