



Water Policy Interim Committee

63rd Montana Legislature

SENATE MEMBERS

CHAS VINCENT--Chair
JENNIFER FIELDER
BRADLEY MAXON HAMLETT
SHARON STEWART-PEREGOY

HOUSE MEMBERS

KATHLEEN WILLIAMS--Vice Chair
PAT CONNELL
STEVE FITZPATRICK
REILLY NEILL

COMMITTEE STAFF

JASON MOHR, Lead Staff
HELEN THIGPEN, Staff Attorney
NADINE SPENCER, Secretary

MINUTES LOG

October 29, 2014

Room 172, State Capitol Building
Helena, Montana

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. CHAS VINCENT, chair
REP. KATHLEEN WILLIAMS, vice chair

SEN. JENNIFER FIELDER
SEN. BRADLEY MAXON HAMLETT
SEN. SHARON STEWART-PEREGOY

REP. PAT CONNELL
REP. STEVE FITZPATRICK
REP. REILLY NEILL

STAFF PRESENT

JASON MOHR, lead staff
HELEN THIGPEN, staff attorney
NADINE SPENCER, secretary

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

- The Water Policy Interim Committee (WPIC) approved the minutes from September 8-9, 2014.
- The WPIC voted 8-0 to continue to receive the hydroelectric potential report.
- The WPIC voted 8-0 to continue to receive the report of temporary leases of appropriation right.

CALL TO ORDER AND ROLL CALL

00:14:00 Sen. Vincent called the meeting to order at 9:06 a.m. The secretary called the roll, [Attachment 3](#).

AGENDA

00:15:32 **Motion/Vote:** Rep. Williams moved to accept the minutes from September 8-9, 2014. The motion carried unanimously by voice vote.

REVIEW OF PROPOSED COMMITTEE BILL DRAFTS

00:15:45 Sen. Vincent said Jason Mohr, research analyst, Legislative Services Division (LSD), will give an overview of the proposed committee drafts that were discussed at the September WPIC meeting.

00:16:15 Mr. Mohr said the WPIC will determine whether to pre-introduce the bills and then assign a sponsor to carry the bills during the 2015 Legislative session.

LC wpcA: Study future water rights administration

00:16:58 Mr. Mohr gave a review of LC wpcA, [Exhibit 1](#).

LC wpcB: Increase funding for GWIP

00:18:41 Mr. Mohr gave a review of LC wpcB, [Exhibit 2](#).

LC wpcC: Reallocating Metal Mines license tax

00:20:21 Mr. Mohr gave a review of LC wpcC, [Exhibit 3](#), and discussed the additional language added to the bill draft, [Exhibit 4](#).

LC wpcD: Filing of exempt water rights claims

00:24:17 Mr. Mohr gave a review of LC wpcD, [Exhibit 5](#).

LC wpic: Expanding WPIC duties

00:26:33 Joe Kolman, environmental analyst, LSD, gave a review of LC wpic, [Exhibit 6](#).

Public comment on LC wpcA

00:33:09 Russ McElyea, chief water judge, Montana Water Court

Public comment on LC wpcB None

Public comment on LC wpcC

00:34:18 Tammy Johnson, executive director, Montana Mining Association

Public comment on LC wpic

00:36:37 Mr. McElyea

Public comment on LC wpcD

00:37:27 Mr. McElyea

00:39:05 Ronda Wiggers, Montana County Treasurers Association

Committee questions and discussion on LC wpcA

00:41:51 Rep. Williams asked Mr. McElyea if he thought the bill should be more specific or if he preferred keeping it broad in order to give the WPIC more prerogative. Mr. McElyea said keeping the bill broad is a desirable attribute and the current leadership of the WPIC will be able to focus on the issues that matter.

00:43:40 Rep. Williams said if the bill was more specific it would make it easier to be passed by the legislature. Sen. Vincent said any changes to the bill draft need to be given to staff today in order to be discussed at the meeting tomorrow.

Committee questions and discussion on LC wpcB

00:44:47 Sen. Hamlett said it is important that funding is provided to the Ground Water Investigation Program in order to continue research invaluable to the state.

Committee questions and discussion on LC wpcC

00:45:35 Rep. Williams recommended an amendment in order to keep the intention of the bill clear.

- 00:46:06 Sen. Vincent said the bill is very specific and asked if including the amendment would be a problem. Mr. Mohr said he will look at the bill to determine where the amendment will fit best. Rep. Williams said she recommends not adding the amendment if it creates an issue.
- 00:47:13 Rep. Fitzpatrick asked how much reclamation is needed and what it will cost. Mr. Mohr said he did not have a list of projects, but there are dozens if not hundreds of abandoned hard rock mines across the state.
- 00:47:45 Rep. Fitzpatrick said he recommends adding a sunset as an amendment to have the legislature reevaluate in 4-6 years. Sen. Vincent agreed.
- 00:48:22 Sen. Hamlett said it is a better way to allocate the money since it can be applied to projects statewide.
- 00:48:47 Sen. Vincent said the reason 47 percent and not 57 percent of the Metal Mines license tax was used as the amount directed toward reclamation of abandoned hard rock mines is in anticipation of another bill during the next legislative session to redirect some of the money to counties.
- 00:49:43 Sen. Vincent asked that a six-year reevaluation be included in the bill. Rep. Fitzpatrick agreed. Mr. Mohr said he will draft the amendment.

Committee questions and discussion on LC wpcD

- 00:50:32 Rep. Connell said he is concerned about the financial impact to counties to publish the notice for filing water rights claims in the property tax bill.
- 00:51:57 Sen. Fielder asked how many times the notice needs to be mailed. Mr. Mohr said the notice must be mailed with the property tax bill once before February 28, 2018.
- 00:53:59 Sen. Fielder asked if the county treasurers looked at any alternative ways to provide the notice. Ms. Wiggers said the proposed bill requires notice to be given on every tax bill mailed in October until February 2018. She said mailing lists are downloaded from the Department of Revenue's (DOR) database. She said the Department of Natural Resources and Conservation (DNRC) may be able to download the mailing list and send the notices.
- 00:56:01 Rep. Williams asked if any information on the property tax notice can be removed because it is obsolete. Ms. Wiggers said the notices are updated after every legislative session.
- 00:57:05 Rep. Williams asked if the Water Adjudication Advisory Committee discussed any other options for mailing the notices. Mr. McElyea said the decision to include the notice in the property tax bill was made because of concerns from the WPIC that the public did not have adequate notice to file for exempt claims. He said he is not opposed to having the notices sent by the DNRC.

- 00:58:56 Rep. Williams asked if it is a change in procedure to mail the notice from the DNRC rather than the Water Court. Mr. McElyea said historically when water rights claims were filed they were filed with the DNRC.
- 00:59:52 Sen. Fielder said it is important to provide public notice and agreed that the notices should be sent by the DNRC.
- 01:00:58 Sen. Hamlett said a water right is a property right and that was why it was included in the property tax bill. He said the notice should be included in the property tax bill and sent by the DNRC. He said he supports the bill
- 01:02:20 Sen. Vincent said he supports an amendment to the bill so that the notice is sent by the DNRC using the DOR property tax database.
- 01:03:53 Rep. Connell said he did not think it is necessary to send multiple notices for a single deadline. Sen. Hamlett said if one notice is sent it should indicate it is a final and only notice.
- 01:06:02 Sen. Vincent said he supports sending the notice more than once and to find out how much it will cost to send the notice three times. He said he recommends finding a different way to send the notice.

Committee questions and discussion on LC wpic

- 01:07:50 Rep. Connell asked Sen. Hamlett about the bill he sponsored during the 2013 legislative session dealing with occlusions in stream beds and if the discussion was initiated by the WPIC.
- 01:08:34 Sen. Hamlett said the bill is addressing the problem of redundancy between the WPIC and the EQC. He said there may be opposition to the bill because it takes away oversight by the EQC.
- 01:09:58 Sen. Fielder said she supports the bill because the EQC has a large workload and is unable to discuss topics in depth and said it will be easier for citizens to follow one committee.
- 01:10:29 Rep. Connell said he agreed, but is concerned that the language of the bill will limit the WPIC to discussions of water volume and quality. Sen. Vincent said he did not think the bill will restrict the WPIC. He said he supports the bill.
- 01:13:46 Rep. Williams asked if the idea for the bill was brought before the EQC. Mr. Kolman said the issue was brought before the EQC at their last meeting and that the bill draft was emailed to all of the members.
- 01:14:26 Rep. Williams asked if staff has received any comments from members of the EQC. Mr. Kolman said they have not.

- 01:14:41 Rep. Williams asked if the bill will give the WPIC oversight over a specific agency. Mr. Kolman said it will give the WPIC legislative drafting oversight and rule oversight over any water issue that primarily deals with water quality or water quantity in the Department of Environmental Quality (DEQ), the Department of Fish, Wildlife, and Parks (FWP), and the DNRC.
- 01:15:25 Rep. Williams asked if any other interim committee have oversight over a topic rather than an agency. Mr. Kolman said he is not aware of any.
- 01:15:42 Rep. Williams asked if anyone on the WPIC had an opinion on whether to include the water compact in the bill.
- 01:16:16 Sen. Vincent said he did not think it would be a substantive change and asked who would be the appropriate person to ask. Mr. Kolman said he did ask legal council for the Reserved Water Rights Compact Commission (RWRCC) and she advised against changing it.
- 01:17:36 Sen. Vincent requested staff to bring an amendment. Rep. Williams clarified the amendment will remove the compact from the bill. Sen. Vincent said it will.
- 01:18:09 Sen. Hamlett said the bill is necessary because otherwise the compact would have been tasked to the EQC and added days to their meetings. Sen. Fielder agreed.

REVIEW OF STATUTORILY REQUIRED REPORTS (5-5-215, MCA)

- 01:20:08 Mr. Mohr said the hydroelectric report and the temporary lease reports were heard by the WPIC at the September meeting. He said a motion is needed if the WPIC wants to keep receiving the reports.

Hydroelectric potential report

- 01:20:38 **Motion/Vote:** Rep. Connell moved to have the WPIC continue to receive the hydroelectric potential report. The motion carried unanimously by voice vote.

Report of temporary leases of appropriation right

- 01:20:56 **Motion/Vote:** Rep Williams moved to have the WPIC continue to receive the report of temporary leases of appropriation right. The motion carried unanimously by voice vote.
- 01:21:29 Recess
- 01:35:46 Reconvene

UPDATE ON LIMITED RENEGOTIATIONS OF PROPOSED CSKT WATER RIGHTS SETTLEMENT

01:37:26 Melissa Hornbein, staff attorney, RWRCC, gave an update on the status of reopened negotiations between the state, the Confederated Salish & Kootenai Tribes (CSKT), and the federal government. She provided a copy of the PowerPoint presentation given at the negotiation session, [Exhibit 7](#), and an outline of the state's substantive principles, [Exhibit 8](#).

Committee questions and discussion

- 01:53:30 Sen. Fielder asked why the CSKT officials redlined every mention of the Flathead Joint Board of Control (FJBC) from the Oct. 13 draft of the Water Use Agreement. Ms. Hornbein said the reason the references to the FJBC were removed from the compact is because the FJBC is not currently a party to the agreement and cannot be bound under the legal provisions of the agreement.
- 01:54:43 Sen. Fielder asked if the FJBC was ever part of the negotiations of the compact. Ms. Hornbein said the FJBC was a negotiating party to the Water Use Agreement.
- 01:56:08 Sen. Fielder asked if tribal leaders walked out of the Oct. 15 meeting. Ms. Hornbein said she thought the reason some of the tribal members left was because of offensive comments made during public comment.
- 01:57:00 Sen. Vincent asked who will be the members of the interim technical team and how long they will participate. Ms. Hornbein said the proposed interim technical team will be comprised of one primary team member from the state, the tribes, and the project operator, and a secondary member will be appointed by each of the primary member groups. She said it is anticipated they will continue to function beyond the effective date, but the primary focus is on the interim set-up period.
- 01:59:57 Sen. Vincent asked about the fail safe to make sure that the historic use will be delivered at the River Diversion Allowances (RDAs). He said Hungry Horse Reservoir had 11,000 acre feet at the fixed rate, and if the state is suggesting the pump station doesn't satisfy that, then free water could be used. Ms. Hornbein said it is part of the rest of the 98,000 acre feet and the 11,000 acre feet is specifically stipulated for off-reservation uses.
- 02:01:26 Sen. Vincent asked about the limiting factors for the 79,000 acre feet that is left over from Hungry Horse Reservoir. Ms. Hornbein said 11,000 acre feet is for off-reservation use, but she did not have details on the current constraints on the way the other 79,000 acre feet could or could not be used. She said in coming up with the total 90,000 acre feet there were a number of biological and cost reallocation studies done.

- 02:03:32 Sen. Hamlett asked what the historic number is for the most acres ever under irrigation within the confines of the reservation. Ms. Hornbein said she did not know. Sen. Vincent said he thought it was 175,000 acres.
- 02:04:03 Sen. Hamlett asked about the number of acres being used in the proposed compact. Ms. Hornbein said under the compact the maximum number of acres that can be irrigated under the Flathead Indian Irrigation Project (FIIP) water use right is 130,000.
- 02:04:29 Sen. Vincent said 120,000 acres is currently being irrigated.
- 02:04:35 Sen. Hamlett asked who provided the information for the acreage used in the compact. Ms. Hornbein said she did not know.
- 02:04:57 Sen. Hamlett asked if the irrigators provided acreage amounts during the compact hearings. Ms. Hornbein said they may have during the initial negotiations, but not during the current round of negotiations.
- 02:05:41 Sen. Hamlett asked if there was ever any discussion in improving the efficiency and delivery system of the irrigation system to allow for past historical acres that were irrigated to be irrigated again. Ms. Hornbein said she was not aware that it was part of the negotiations in terms of expanding the number of acres assessed under the project.
- 02:06:19 Sen. Hamlett asked why the irrigated acres went from 175,000 to 120,000. Ms. Hornbein said agriculture in the valley has decreased over the past decade.
- 02:06:55 Sen. Hamlett asked if the acres were all under the irrigation systems. Ms. Hornbein said acres that were originally assessed as part of the project, but no longer are, would have been under project infrastructure in order to be assessed as part of the project.

Public comment

- 02:07:53 Hertha Lund, Common Sense Citizens for the CSKT Compact
- 02:09:09 Bob Stone, Polson
- 02:11:49 Christopher Chavasse, Ronan
- 02:16:56 Brian Upton, attorney, CSKT
- 02:19:28 Craig McClure, Polson
- 02:20:48 Ronald Trahan, CSKT

ADDITIONAL PERSPECTIVES ON PROPOSED CSKT WATER RIGHTS SETTLEMENT

- 02:21:53 Rep. Nancy Ballance, HD 89.
- 02:25:39 Rep. Keith Regier, HD 5, [Exhibit 9](#).

- 02:29:33 Jay Stein, attorney, Simms & Stein, representing Montana Land and Water Alliance
- 02:50:11 Bruce Frederickson, attorney, FJBC
- 03:04:36 Ed Everheart, engineer, FJBC, via phone.

Public comment

- 03:18:21 John Carter, attorney, CSKT
- 03:27:20 John Colledge, Arlee, [Exhibit 10](#).
- 03:31:10 Seth Makepeace, hydrologist, CSKT, [Exhibit 11](#).
- 03:33:13 Ms. Lund
- 03:35:47 Elaine Willman, director of tribal affairs, Hobart, Wisconsin
- 03:40:19 Recess
- 04:44:22 Reconvene

Public comment continued

- 04:45:21 Shelia Vallejo, St. Ignatius, [Exhibit 12](#).
- 04:46:35 Roger Raynal, Corvallis, [Exhibit 13](#).
- 04:48:26 David Passieri, St. Ignatius
- 04:50:40 Shelly Fyant, CSKT
- 04:53:46 Ms. Hornbein
- 04:55:29 Mr. Chavasse
- 04:58:38 Rep. Jerry O'Neil, HD 3

Committee questions and discussion

- 04:59:45 Sen. Fielder asked for an answer to Rep. Neil's question regarding the instream flow and the water right in the mainstem of the Flathead River coming into the lake. Ms. Hornbein gave an overview of the impact of that quantified water right on irrigation users out of the main stem of the Flathead.
- 05:01:18 Rep. O'Neil said in the mainstem of the Flathead River they are only guaranteed 5 percent of the recorded flow after the tribe takes its water. Sen. Vincent said the amount of the instream flow will be 5 percent of the lowest recorded flow. Rep. O'Neil said they would like more than 5 percent guaranteed instream flow.
- 05:02:51 Rep. Williams asked about the process used to communicate with the legislators who signed the letter submitted by Rep. Ballance and Rep. Regier. Rep. Ballance said she does reach out to the legislators, but there isn't a formal process to get together and discuss the issues.

- 05:05:27 Rep. Williams asked if Rep. Ballance conferred with the legislators on what she presented today. Rep. Ballance said she did not, but did communicate with them on the concerns she talked about and asked them to respond back if they had questions or did not agree.
- 05:06:09 Rep. Williams said it would help the process if legislators watch the proceedings and engage in the process as well as communicating with Rep. Ballance. Rep. Ballance said that some of the legislators are engaging in the process on their own.
- 05:07:01 Rep. Williams thanked Rep. Ballance for engaging in the proceedings independently. Rep. Ballance said it is important for all legislators to understand the issues before voting on the compact.
- 05:07:58 Rep. Neill asked Mr. Stein what the potential consequences are to his clients if the compact is not negotiated. Mr. Stein said they would like to negotiate the issues of title transfer, the reduction in the amount of water, and administration of water rights. He said if those issues are not negotiated, it is possible there will be litigation.
- 05:09:57 Rep. Neill asked Ms. Lund about her perspective on the consequences, if there is not a negotiated compact. Ms. Lund said if there isn't a compact, and the tribe has to file their water rights, irrigators on the reservation and across the state of Montana will be defending their water rights in the Water Court.
- 05:11:11 Rep. Fitzpatrick asked Rep. Ballance if she is concerned the irrigators in her district and in the Bitterroot Valley are going to have to pay a large amount in legal fees to defend their rights and whether it is possible they could have their rights diminished. Rep. Ballance said the situation in the Bitterroot Valley is different because it is a shared responsibility. She is concerned about litigation if the compact is passed.
- 05:13:32 Rep. Fitzpatrick said there are no water rights granted in the Bitterroot Valley in the compact, but if the compact doesn't pass there is a potential that the tribe could have a water right. Rep. Ballance said the impacts to the state of Montana if the compact is ratified are higher than the risk to the people in the Bitterroot Valley.
- 05:15:03 Rep. Fitzpatrick asked Rep. Ballance to respond to a statement made in a letter from Tucker Crossing Ranch (see exhibit 13), if the compact is not ratified water rights across Montana will be in jeopardy. Rep. Ballance said she has not read the letter, but agreed that there may be filings in the Bitterroot Valley, but did not believe all of the cases will be won in court.

- 05:16:43 Rep. Connell asked about the east side of the Bitterroot mountains and the ability for agriculture without the water currently being delivered by the Bitter Root Irrigation District and mainstem diversion points. Mr. Raynal said he is not a member of the irrigation district, but said that the ranch that he operates has sources of water from five irrigation companies. He said he did not see any changes under the compact.
- 05:20:09 Rep. Connell asked what would happen to the vegetation if the water in the irrigation projects is not available. Mr. Raynal said he would not be able to grow much.
- 05:21:01 Sen. Fielder asked if the compact is not ratified, and the tribe files 10,000 claims across Montana, is there anything that would prevent the attorney general from defending those water rights. Ms. Hornbein said she is not aware of any bar preventing the attorney general from defending the claims, but said the office is responsible for defending state interests, not individual interests.
- 05:23:33 Sen. Fielder asked if there is a legal requirement or prohibition that would prevent the attorney general from defending the claims. Ms. Hornbein said she was not aware of any.
- 05:23:41 Sen. Fielder asked the legal definition of state. Ms. Hornbein said she did not have the statutory definition of state, but in the context of state interest it is generally held to be interests of the state of Montana as a sovereign political entity.
- 05:24:10 Sen. Fielder said the definition also includes a group of people that live inside that geopolitical boarder.
- 05:24:21 Sen. Fielder asked if there is a way to make the compact searchable by key word. Ms. Hornbein said the compact draft and almost every other document that is posted on the RWRCC's website are in PDF form and word searchable.
- 05:25:17 Sen. Fielder asked if the compact is word searchable. Ms. Hornbein said she thought the current draft is.
- 05:26:01 Sen. Hamlett asked what each water right claim will cost the DNRC if the compact is not ratified. He also asked about the purpose of the reservation. Mr. Carter said the purposes of the reservation was reserved as a permanent and exclusive homeland for the tribes in perpetuity.

DISCUSSION OF "COURT OF COMPETENT JURISDICTION" AS REFERRED TO IN PROPOSED CSKT WATER RIGHT COMPACT

- 05:29:36 Helen Thigpen, staff attorney, LSD, gave her analysis of "court of competent jurisdiction."

05:39:38 Ms. Hornbein gave her analysis of court of competent jurisdiction.

Public comment

05:48:02 Dick Erb, Moiese
05:49:29 Clarice Ryan, Big Fork, [Exhibit 14](#).
05:52:36 Mr. Chavasse
05:55:04 Rep. O'Neil
05:57:07 Ms. Willman
05:59:52 John Harrison, attorney, CSKT
06:01:56 Dean Brockway, Arlee, [Exhibit 15](#).
06:04:28 Sen. Fielder, [Exhibit 16](#).

Committee questions and discussion

06:07:11 Sen. Vincent asked about the language in the Fort Peck Compact relative to the court of competent jurisdiction. Ms. Hornbein said it is either a state court or a federal court otherwise possessing jurisdiction over the issue or the litigants and a tribal court so long as all litigants consent to tribal court jurisdiction.

06:07:56 Sen. Vincent asked what the language means. Ms. Hornbein said it requires a party to consent for the tribal court to have jurisdiction.

06:09:14 Sen. Vincent asked if a non-tribal member has to consent for an issue to be resolved in tribal court and if a tribal member does not consent to have a case heard in a state district court, does it go to federal court. Ms. Hornbein said the Fort Peck language does not specify. She said the state court can hear any case that it otherwise has jurisdiction over without consent of the parties involved.

06:10:15 Sen. Hamlett said the compact should adopt the language from the Fort Peck Compact with the addition of the Water Court.

USE OF "NET POWER REVENUES" FOR FIIP IMPROVEMENTS

06:11:18 Mr. Mohr, gave an overview of net power revenues and the FIIP, [Exhibit 17](#).

06:14:42 John Swenson, irrigator, said he is concerned because there is a lien on his property from the 1948 repayment contract, [Exhibit 18](#), and provided an outline for his reference points, [Exhibit 19](#).

06:21:21 Rhonda Swaney, staff attorney, CSKT

Public comment

06:34:45 Mary Price
06:35:53 Chris Sullivan, irrigator, Dixon
06:40:05 Mr. Erb
06:41:15 Mr. Chavasse

06:44:28 Mr. Passieri
06:49:34 Sen. Verdell Jackson, SD 5
06:52:30 Sen. Vincent
06:52:54 Sen. Jackson
06:53:29 Gene Erb, St. Ignatius, [Exhibit 20](#).
07:02:20 Tim Orr, St. Ignatius
07:07:57 Ms. Ryan
07:10:52 Mr. Brockway

Committee questions and discussion

07:12:56 Sen. Fielder asked Ms. Swaney to clarify the net power revenues for Mission Valley Power (MVP). Ms. Swaney explained why MVP does not consider it has any net power revenues left for the year.

07:14:49 Sen. Fielder clarified that Ms. Swaney did not dispute the information provided in the table (see Exhibit 17). Ms. Swaney said she did not.

07:15:08 Recess
07:37:30 Reconvene

COMMITTEE RECOMMENDATIONS TO RWRCC

07:37:43 Sen. Vincent opened discussion on recommendations to the RWRCC.

07:38:48 Sen. Hamlett said he recommends obtaining historical relevant facts on the amount of irrigated acres within the compact area, to clarify why there was a decrease in agriculture acres, to consider including language from the Fort Peck Compact on the court of competent jurisdiction, and to include the Water Court as a court of competent jurisdiction.

07:41:02 Sen. Vincent clarified the recommendation to identify historic acres that potentially fell off production agriculture because of the infrastructure of the project, and if there will be a need to include additional acres after rehabilitation. Sen. Hamlett agreed.

07:41:55 Mr. Mohr restated the recommendation as "with irrigation project improvements the compact commission consider recovery of previously irrigated lands." Sen. Hamlett said he wants to find out what happened to the previously irrigated acres. Mr. Mohr said he can answer the questions separately and list the recommendations as action items. Sen. Vincent said it can also be put as a qualifier in the letter to the RWRCC.

07:43:19 Rep. Connell said he recommends local representation on the technical team.

- 07:45:10 Sen. Vincent asked about the make-up of the technical committee and said it should include expertise from the Montana Bureau of Mines and Geology (MBMG). Ms. Hornbein said including the MBMG was not discussed. She said the interim technical team or an adaptive management team will be composed of technical staff from the negotiating parties and from the project operator.
- 07:46:35 Sen. Vincent asked if there has been any discussion about the MBMG. Ms. Hornbein said there has not.
- 07:48:41 Sen. Vincent asked if the technical team will continue to function after the project is rehabilitated. Ms. Hornbein said it is not within the state's proposal, but it is expected that there will be some overlap between ratification and the effective date. She said the tribe has proposed an adaptive management team that will be on-going and provide for implementation of the operational improvements on the project and day-to-day adaptive management at the exterior boundaries of the project.
- 07:49:24 Sen. Vincent asked if the technical team will report to the Unitary Management Board (UMB). Ms. Hornbein said it has not been specified.
- 07:49:21 Sen. Vincent said he recommends proposing a technical team similar to what the tribe has proposed, including the MBMG as a part of the technical team responsible to someone who can be held accountable.
- 07:50:29 Rep. Connell said there should be a documented trail of activity and adequate records maintained.
- 07:50:59 Sen. Vincent said Montana's daylight provisions are applicable to the UMB.
- 07:51:30 Sen. Vincent asked if there are any recommendations for the UMB.
- 07:51:40 Sen. Hamlett said he recommends considering county commissioners and elected officials to serve on the technical team or have them come together and vote on someone out of a pool of candidates in order to allow for local decisions.
- 07:52:09 Sen. Vincent said there is concern that people are not appointed by someone locally. He recommended having county commissioners appoint possible candidates and have the governor select from the appointees.
- 07:53:49 Rep. Connell said to consider having continuity in the technical team so if there is a change in administration the expertise of the people on the team isn't lost. Sen. Vincent said he is not sure what the length of term is, but did not think it would be a problem.
- 07:54:52 Rep. Williams asked how many counties are involved. Sen. Vincent said there are three counties.

- 07:55:07 Rep. Williams said each county commissioner could provide two suggestions for possible candidates, making a total of six candidates that the governor could chose from.
- 07:55:25 Sen. Hamlett said the county commissioners could work together to put a slate of candidates together. Sen. Vincent said in the legislative appointment process there is a slate of candidates that get a share in the proportionate vote. Sen. Hamlett said the process is fair and reasonable.
- 07:56:08 Sen. Fielder said if two members are appointed by the tribe then two members should be independent of the tribe so there is an equal balance. Sen. Vincent said he is not sure it is legal. He asked staff to find out.
- 07:58:13 Sen. Vincent said he would like to clarify the 90,000 acre feet available in Hungry Horse Reservoir and that the RDAs are sufficient to meet consumptive use. He said he would like to see the remaining 79,000 acre feet be available for use for mitigation purposes off-reservation. Ms. Hornbein said the current intent is that the remaining 79,000 acre feet of the tribal allocation from Hungry Horse Reservoir be able to be used on or off the reservation for any legal purpose with the provision that it cannot be leased or sold out-of-state.
- 08:00:07 Sen. Fielder said the definitions of court of competent jurisdiction, the consensual agreement language, and Indian land need to be clarified.
- 08:02:17 Sen. Hamlett said it needs to be clarified that if fee patent land is owned by a tribal member it wouldn't automatically be considered tribal land.
- 08:03:02 Sen. Stewart-Peregoy said the WPIC needs to look at the federal intent of the law and some of the questions being asked are already defined in federal law. She said the United States allowed encroachments on the reservation in the name of assimilation, and the irrigation systems developed in 1904, 1908, and forward have been on the backs of the landowner. She said the irrigations system benefits the non-Indians who came onto the reservation. She said tribal members who didn't have the finances to maintain their operations let the land go stagnant and may account for the decrease in agriculture acres.
- 08:12:22 Sen. Hamlett said the actions that were taken were federal actions and not actions taken by the state.
- 08:13:03 Sen. Vincent said one of three issues brought to the WPIC by the FJBC was their request for fair legal title of the water right. He said he did not think it will be achievable in the negotiations, but he said the RWRCC could support federal ownership of the water rights for the irrigation project and that those irrigators have a delivery right to that water.

- 08:14:10 Sen. Vincent asked about the delivery right. Ms. Hornbein said the state has proposed something that is part of the definition of the FIIP water use right. It provides a commensurate right to have water delivered that is attached to assessed land within the project. It runs with that land that is transferable.
- 08:16:27 Sen. Vincent asked about an operations and maintenance fee. Ms. Hornbein responded.
- 08:17:18 Sen. Vincent asked if there has been any consideration of individuals with the delivery right to market their water on-project to another person. Ms. Hornbein said it has not been specifically discussed. Mr. Carter said federal regulations do not allow for marketing of irrigation water.
- 08:19:34 Sen. Vincent asked what the federal regulation is and if it applies just to tribal water. Mr. Carter said the regulation is 25 CFR 171, and applies only to the irrigation project.
- 08:19:58 Sen. Vincent said since the compact is going to be ratified by Congress, they could make an allowance for that provision Mr. Carter agreed.
- 08:20:24 Sen. Vincent asked if an individual has a delivery right of a certain amount and wants to change a crop rotation, but in order to keep that water can someone else use it. Mr. Carter said that does happen informally, but is not federally authorized. Sen. Vincent said it is a right and attached to the property as a property right, and individuals should be able to use the water that way.
- 08:21:46 Sen. Fielder said she recommends that any wells that are adversely impacted by the change in use because of the agreement be included in mitigation funding.
- 08:22:45 Sen. Vincent asked if it will be specifically tied to wells due to change of use. Sen. Fielder said it would be the wells identified by the CSKT technical working group that will be impacted by the change in use.
- 08:23:26 Sen. Vincent asked if the tribe has done groundwater studies for all areas they have been collecting data on. Mr. Makepeace said they have done groundwater assessments throughout the reservation.
- 08:24:03 Mr. Makepeace said the latest version of the adaptive management section advanced by the tribes has a generic term called "resource mitigation," intended to be wells and maybe a person's wetland. It identifies that those adversely impacted resources will be mitigated with funds from the overall rehabilitation and betterment project.
- 08:25:15 Mr. Makepeace said the tribe has allowed the practice of redistribution of water within one service area source.

- 08:26:16 Sen. Vincent asked if groundwater assessments will be provided to the technical team. He asked if the tribe saw a benefit in having the MBMG involved on a technical team. Mr. Makepeace said they have groundwater flow models and the supporting information for the primary aquifer resources. He said the tribes, the state, or the federal government can reach out to the technical community to address specific questions of concern, but did not feel that the MBMG needed to be involved in every planning meeting.
- 08:28:15 Sen. Vincent said it may be worth the investment to have the MBMG involved until the project work is designed and completed. Mr. Makepeace said the tribe has a good working relationship with the MBMG, and the only barrier is expense.
- 08:29:00 Sen. Fielder asked about the process someone would follow if their well was impacted by change of use. Mr. Makepeace explained the process and said the information is on the RWRCC website.
- 08:31:21 Rep. Williams said the tribe is being generous in mitigating wells that are adversely impacted by a change in use. She said if a well is adversely impacted off reservation there is no responsibility on the part of the entity that caused the effect to deepen the well. Sen. Vincent said the developer is not required to mitigate the damages, but in a change of use they would be. Ms. Hornbein responded.
- 08:33:16 Sen. Fielder said she is concerned about people adversely affected by the compact. Rep. Williams agreed.
- 08:34:18 Sen. Vincent asked if the non-quota water is being encapsulated in the RDA. Ms. Hornbein said the compact is silent on non-quota water and RDAs could potentially include non-quota water. Mr. Makepeace said the tribe use a term for farm deliveries called "historic farm deliveries." He said the RDAs may have latitude for additional water.
- 08:36:24 Sen. Vincent said many people consider non-quota water as water that arrives before July 1 and asked if there is a need to run excess water down ditches because there is no where else to put it. Mr. Makepeace said the irrigation project is not authorized for flood control.
- 08:37:59 Sen. Fielder said she recommends identifying the quantity of water needed to fulfill the purpose of the reservation.
- 08:39:28 Sen. Hamlett advised the WPIC to consider off-reservation water rights and what that means. He said having the CSKT Water Compact ratified is the best thing for the state.
- 08:44:36 Mr. Mohr gave a summary of the WPIC's recommendations to the RWRCC.
- 08:49:08 Rep. Williams said she recommends adding a program to educate legislators about the compact.

Public comment

08:50:12 Mr. Erb
08:52:36 Rep. Kerry White, HD 70
08:54:09 Ms. Willman
09:00:07 Ms. Lund, [Exhibit 21](#).
09:02:24 Cory Swanson, Attorney General's office
09:08:11 Mr. Chavasse
09:09:07 Jack Horner, Ronan

09:10:58 Sen. Vincent adjourned the meeting at 6:03 p.m.

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