



Water Policy Interim Committee

64th Montana Legislature

SENATE MEMBERS

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

HOUSE MEMBERS

CARL GLIMM--Vice Chair
BOB BROWN
ZACH BROWN
KATHLEEN WILLIAMS

COMMITTEE STAFF

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

MINUTES LOG

July 11, 2016
Room 172, Capitol Building
Helena, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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COMMITTEE MEMBERS PRESENT

SEN. BRADLEY MAXON HAMLETT, Chair
REP. CARL GLIMM, Vice Chair

SEN. SHARON STEWART-PEREGOY
SEN. CHAS VINCENT

REP. BOB BROWN
REP. ZACH BROWN
REP. KATHLEEN WILLIAMS

COMMITTEE MEMBERS EXCUSED

SEN. JENNIFER FIELDER

STAFF PRESENT

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

AGENDA (Attachment 1)

VISITORS' LIST (Attachment 2)

COMMITTEE ACTIONS

The Water Policy Interim Committee (WPIC):

- Approved the minutes log from May 2-3, 2016 as amended;
- Voted to continue to receive the nutrient standards update (75-5-313, MCA) and the nutrient work group biennial summary report (75-5-313, MCA);
- Voted to continue to receive the Total Maximum Daily Load (TMDL) report (75-5-703, MCA);
- Voted to continue to receive the hydroelectric potential report (85-1-501, MCA);
- Voted to continue to receive the Clark Fork River Basin Task Force update (85-2-350, MCA);
- Voted to keep the Water Pollution Control Advisory Council (WPCAC) (2-15-2107, MCA) and to find out its cost.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Hamlett called the meeting to order at 9:13 a.m. The secretary called the roll. **(Attachment 3)** Sen. Fielder was excused.

ADMINISTRATIVE MATTERS

00:00:32 Sen. Hamlett asked if there were any corrections to the minutes from the May meeting.

00:01:16 Rep. Williams said in the summary of committee action for May 3 the motion to draft legislation defining a combined appropriation should be more specific and refer to SB 19 (2013).

Discussion:

00:02:26 Sen. Hamlett
00:02:31 Rep. Williams
00:02:38 Sen. Hamlett
00:02:48 Rep. Glimm
00:03:20 Rep. Williams

00:03:45 **Motion/Vote:** Rep. Williams moved to accept the May 2-3, 2016 minutes as amended. The motion carried unanimously by voice vote of those present and voting.

NUTRIENTS: STANDARDS AND WORK GROUP UPDATES

- 00:04:54 Eric Urban, bureau chief, Water Quality Planning Bureau, Department of Environmental Quality (DEQ), presented the annual and biennial summary report on numeric nutrient standards and variances for Montana's surface waters.
(Exhibit 1)
- 00:07:21 Mr. Urban discussed the lagoon monitoring project in Joliet.
- 00:11:37 Mr. Urban discussed water quality criteria standards.
- 00:12:30 Sen. Stewart Peregoy entered the meeting.
- 00:13:58 Mr. Urban discussed the lawsuit filed over nutrient standards variances.

Public Comment: None

Committee Questions and Discussion:

- 00:15:07 Rep. Williams asked Mr. Urban about lagoon technology and if other off-site treatments will be considered in a request for proposal (RFP).
- 00:16:28 Sen. Hamlett asked Mr. Urban if the monitors installed in the lagoon provide real-time data on the level of the lagoon.
- 00:17:29 Sen. Hamlett said if there had been a monitor in the lagoon at the Yellowstone Club it might have indicated the leak sooner.
- 00:18:40 Sen. Vincent thanked the DEQ for its work on the variance process and asked how working with the EPA on accepting and implementing the variances compares with the rest of the nation.
- 00:21:42 Sen. Hamlett asked about the ability to measure pharmaceuticals. Mr. Urban said a standard needs to be developed first.
- 00:23:57 Rep. Williams said that pharmaceutical and personal care products haven't been detected in surface water and asked about concentrations found in groundwater.
- 00:25:37 Rep. Williams asked about the specialist that was recently hired by the DEQ. Mr. Urban said Dr. Mavencamp was hired to set the stage for Montana's understanding of pharmaceuticals.
- 00:26:30 Rep. Williams asked about the triennial review and if it will include a review of pharmaceuticals. Mr. Urban said it will not.
- 00:27:58 Sen. Stewart Peregoy asked why pharmaceuticals will not be included in the review. Mr. Urban said the department does not have the knowledge on how to adopt and implement a pharmaceutical standard.
- 00:29:00 Sen. Stewart Peregoy asked if there are any plans to do a 3-5 year study on pharmaceuticals in water and the long-term impacts on animals and humans. Mr. Urban said Montana does not have any plans, but will follow national projects.
- 00:30:15 Sen. Stewart Peregoy asked if the DEQ would be interested in a study conducted by one of the state's higher educational institutions. Mr. Urban said the DEQ would be interested in partnering with anyone who wants to produce sound science regarding water quality standards.
- 00:31:19 Rep. Williams asked Mr. Urban if there is an issue in Montana with microbeads.
- 00:33:22 Sen. Hamlett opened discussion on whether or not the WPIC should continue to receive the numeric nutrient standard report.

00:33:33 **Motion:** Sen. Vincent moved that the WPIC continue to receive the numeric nutrient standard report.

Discussion:

00:33:51 Rep. Williams

00:34:09 Sen. Vincent amended his motion to include both the nutrient standards update (75-5-313, MCA) and the nutrient work group biennial summary report (75-5-313, MCA).

00:34:20 **Vote:** The motion carried unanimously by voice vote. Sen. Fielder was excused.

TMDL LIST UPDATE (75-5-703, MCA)

00:35:01 Mr. Urban presented an update on the department's TMDL program. ([Exhibit 2](#))

00:36:05 Mr. Urban said a TMDL is a restoration plan for a watershed.

00:39:09 Mr. Urban discussed TMDL priority areas.

Public Comment: None

Committee Questions and Discussion:

00:42:15 Sen. Vincent asked Mr. Urban how long it takes to collect data for an accurate TMDL, how it interfaces with the new vision of the EPA on state and local involvement in the process, and about the two vacancies on the Statewide TMDL Advisory Group (STAG).

00:48:05 Sen. Hamlett asked Mr. Urban about the water quality planning activities in progress in the Musselshell and Sheep Creek areas.

00:50:52 Sen. Hamlett asked about the potential for catastrophic forest fires that would increase the amount of pollutants going downstream and if baseline information is available.

00:51:45 Sen. Hamlett asked Mr. Urban about the different pollutants monitored in a stream after a forest fire.

00:52:42 Sen. Hamlett asked Mr. Urban about the presence of mercury in a stream after a forest fire.

00:53:20 Sen. Hamlett asked Mr. Urban if the DEQ can differentiate between the sources of pollution from forest fires and mining activities.

00:54:15 Sen. Hamlett asked about microfibers found in water. Mr. Urban said the presence of fleece material is found everywhere in the environment and that the potential harm is not known.

00:56:03 Rep. Williams said it would be helpful to include the number of areas that need to be completed and whether the TMDL's are working and if water quality standards are being met. Mr. Urban said the department has completed 1,342 TMDL's in Montana and that there are over 900 remaining. He said the information can be included in future reports.

01:02:01 Rep. Williams asked Mr. Urban how many TMDL's have been approved for five or more years and what proportion are meeting water quality standards. Mr. Urban said he will find out.

01:02:36 Sen. Hamlett asked about water quality planning used by the state's Indian tribes. Sen. Stewart Peregoy said it varies by tribe.

01:04:23 Sen. Hamlett asked if the tribes invite the DEQ to do stream measurements. Sen. Stewart Peregoy said it is done on a case-by-case basis.

01:05:04 Sen. Hamlett said that the consequences of microplastics in water needs to be studied and asked Mr. Urban if water treated in a municipal water system removes micro plastics. Mr. Urban said he did not know, but that the majority of Montana's municipal drinking water sources are groundwater.

01:06:28 Rep. Z. Brown asked Mr. Urban to provide detailed information about the Sheep Creek TMDL process. Mr. Urban said he will.

01:08:09 Sen. Hamlett asked about the impaired stream in the Sheep Creek area. Mr. Urban said he will find out.

01:08:52 Jason Mohr, research analyst, Legislative Services Division, said the WPIC is scheduled to hear from the company that is proposing to do work in the Sheep Creek area at its September meeting.

01:09:07 Rep. Z. Brown said Moose Creek, a tributary of Sheep Creek, is on the impaired waters list for aluminum. Sen. Hamlett asked Mr. Urban why aluminum is showing up in Moose Creek. Mr. Urban said it is a natural component of the watershed.

01:10:49 Rep. Z. Brown said that Sheep Creek is listed in the impaired waters list for aluminum and cites the source as grazing in riparian and shoreline zones. Mr. Urban discussed the process used in creating the reports.

01:12:15 Rep. Z. Brown asked Mr. Urban about the monitoring process

01:15:08 Rep. Z. Brown asked Mr. Urban about the TMDL for E. coli and how the department prioritizes its work.

01:16:10 Sen. Hamlett asked Mr. Urban if a waterway is still considered pristine if it has naturally occurring aluminum. Mr. Urban said the DEQ is currently developing regulations on how to interpret natural background.

01:17:14 Sen. Hamlett asked Mr. Urban if it is possible to project back to the natural state of a stream. Mr. Urban said it can be done using models.

01:18:27 Sen. Hamlett asked Mr. Urban to respond to the information requested by the committee at the next WPIC meeting.

01:19:54 Sen. Hamlett opened discussion on whether the WPIC should continue to receive the TMDL report.

01:19:58 **Motion/Vote:** Rep. Williams moved that the WPIC continue to receive the TMDL report and to include the number of TMDL's remaining to be done, and to do more if a TMDL is not achieving compliance with applicable water quality standards within 5 years after approval of the TMDL. The motion carried unanimously by voice vote. Sen. Fielder and Sen. Vincent were excused

01:21:30 Recess

01:37:10 Reconvene

01:37:15 Sen. Hamlett said since Rep. Glimm will not be at the meeting tomorrow SB 19 (2013) will be discussed later in the agenda. He said public comment will be taken today and tomorrow.

PROGRAM REVIEW: PUBLIC WATER AND SUBDIVISIONS BUREAU

- 01:38:26 Mr. Mohr presented the program review on the Public Water and Subdivisions Bureau, DEQ. **(Exhibit 3)**
- 01:40:16 Mr. Mohr discussed the Subdivision Review Section.
- 01:42:20 Mr. Mohr discussed the Public Water Supply Plan Review Section.
- 01:43:17 Mr. Mohr discussed the Monitoring and Reporting Section.
- 01:44:09 Mr. Mohr discussed the Field Service Section.
- 01:44:56 Mr. Mohr discussed the Operator Certification Unit.
- 01:46:00 Mr. Mohr discussed staffing issues.
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- 01:46:56 Jon Dilliard, bureau chief, Public Water and Subdivisions Bureau, DEQ, presented information on the Public Water and Subdivisions Bureau.
- 01:48:54 Mr. Dillard discussed the problem with the lag in review time related to revenue and staffing issues.

Public Comment: None

Committee Questions and Discussion:

- 01:51:47 Rep. Williams asked Mr. Dilliard if there are other examples of fee based programs.
- 01:53:15 Rep. Williams asked Mr. Dilliard if the bureau implements 76-4-104, MCA, to ensure there is adequate evidence of a sufficient water supply and if they are working with the DNRC. Mr. Dilliard said they are.
- 01:54:53 Rep. B. Brown asked Mr. Dilliard about the violation reports for 2015 and if it is consistent with previous years. Mr. Dilliard said it is.
- 01:55:53 Rep. B. Brown asked about monitoring and reporting and if there is more emphasis on operators to complete reports.
- 01:57:34 Rep. B. Brown asked Mr. Dilliard if operators are given instructions on how to complete reports.

HYDROELECTRIC POTENTIAL REPORT (85-1-501, MCA)

- 01:58:50 Tim Davis, administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC), presented the hydroelectric report. **(Exhibit 4)**

Public Comment: None

Committee Questions and Discussion:

- 02:01:35 Rep. Z. Brown asked Mr. Davis about the notice of intervention and motion to intervene filed by the Northern Cheyenne Tribe because of water quality concerns related to hydro power development on the Tongue River.
- 02:02:46 Sen. Vincent asked about the cost for a feasibility study. Mr. Davis said the cost is between \$150,000 and \$300,000.
- 02:03:08 Rep. Williams asked Mr. Davis why the Federal Energy Regulatory Permits (FERC) for the Tongue River project were allowed to lapse.
- 02:04:32 Sen. Hamlett opened discussion on whether or not the WPIC should continue to receive the Hydroelectric Potential report.

02:04:51 **Motion/Vote:** Sen. Vincent moved that the WPIC continue to receive the Hydroelectric Potential report. The motion carried unanimously by voice vote. Sen. Fielder was excused.

SB 19: DISCUSSION ON PROPOSED LEGISLATION

02:05:19 Sen. Hamlett opened discussion on proposed legislation regarding SB 19.
02:06:06 Rep. Glimm presented an overview on SB 19, to define combined appropriation for exempt well use.
02:09:40 Mr. Davis presented information on the old rule and the new rule defining a combined appropriation.

Public Comment:

02:12:09 Abigail St. Lawrence, Montana Association of Realtors, discussed the rule.

Committee Questions and Discussion:

02:15:44 Sen. Hamlett said public comment will also be taken tomorrow. He said that SB 19 was an attempt to clarify the rules on exempt wells in statute.
02:18:30 Rep. Williams asked Rep. Glimm about the intent of his request.
02:24:25 Sen. Hamlett said the bill can also be modified to address gallons per minute and the number of acre feet.

02:25:48 Recess for lunch at 11:39 a.m.
03:48:17 Reconvene

INTRODUCTION OF SURFACE WATER ASSESSMENT AND MONITORING PROGRAM

03:48:40 Mr. Davis, presented information on the Surface Water Assessment and Monitoring Program (SWAMP) that the DNRC and the Montana Bureau of Mines and Geology (MBMG) created in order to establish a network of real time stream gauges to improve effective management and distribution of water. **(Exhibit 5)**
03:52:39 John Metesh, director, MBMG, gave a PowerPoint presentation on the SWAMP database. **(Exhibit 6)**

Public Comment: None

Committee Questions and Discussion:

04:09:58 Sen. Vincent asked Mr. Metesh about data collection for water chemistry.
04:11:50 Sen. Vincent asked Mr. Metesh about surface water and water quality monitoring.
04:13:54 Sen. Vincent said the program may be an opportunity for the MBMG to do a pilot project on surface water.

PRIORITIZATION OF GROUND WATER INVESTIGATION PROJECTS

04:16:47 Ginette Abdo, senior research hydrologist and manager, Ground Water Investigation Program (GWIP), MBMG, presented information and gave a PowerPoint presentation on how GWIP projects are nominated and ranked. **(Exhibit 7)**
04:18:12 Ms. Abdo introduced members of the Ground Water Steering Committee.
04:28:58 Ms. Abdo discussed GWIP topics.

- 04:30:57 Ms. Abdo discussed areas where GWIP has worked, is currently working, and new projects.
- 04:31:48 Ms. Abdo discussed uses of GWIP products.

Public Comment: None

Committee Questions and Discussion:

- 04:34:30 Rep. Williams asked Ms. Abdo if taking the State Water Plan into consideration first would have affected the priority of projects.
- 04:36:02 Sen. Vincent said the structure of how GWIP was put together to prioritize projects has worked well and could be replicated for SWAMP.

CLARK FORK RIVER BASIN TASK FORCE UPDATE (85-2-350, MCA)

- 04:36:56 Holly Franz, member, Clark Fork River Basin Task Force, presented an update on the task force.

Public Comment: None

Committee Questions and Discussion:

- 04:41:22 Rep. Williams asked Ms. Franz about the need for task force updates to continue under statute.
- 04:42:38 Rep. Williams said part of the State Water Plan was to support the efforts of watershed groups and asked about potential funding. Ms. Franz said she did not know.
- 04:43:25 Rep. Williams asked Mr. Davis if the State Water Plan includes financial support for watershed work. Mr. Davis said the Conservation Resource Development Division (CARDD), DNRC, did propose, and the legislature passed, a funding mechanism for capacity grants for watershed groups.
- 04:44:39 Rep. Williams said she recommends that the WPIC continue to receive updates from the task force.
- 04:45:03 Sen. Vincent asked Mr. Davis about the amount of state funding that was last earmarked for the task force. Mr. Davis said he will find out.
- 04:45:53 Sen. Hamlett asked Mr. Davis if the Clark Fork River Basin Task Force was the only task force on water that received funding.
- 04:46:47 Sen. Hamlett asked Mr. Davis if the DNRC has additional funding available for other groups. Mr. Davis said there isn't any specific funding other than the capacity grants.
- 04:47:15 Sen. Hamlett asked about the amount of the capacity grants and the amount of funding the task force received in the past. Mr. Davis said he will find out.
- 04:47:39 Sen. Vincent commented on the need to have data in order to make policy decisions.
- 04:49:05 Rep. Williams said it would be helpful to have the CARDD provide information on capacity grants.

- 04:49:57 Rep. Z. Brown said that information on the CARDD website indicates that grants are \$10,000 per year and \$20,000 per biennium and the total budget for the program is \$200,000. He said the National Drought Resilience Partnership that is piloting in the Upper Missouri River is focused on preparing for and responding to drought conditions and is investing in the capacity for conservation districts and watershed groups to have staff available to work together.
- 04:51:38 Sen. Hamlett asked Ms. Franz about grant money that was available in the past.
- 04:52:31 Sen. Hamlett opened discussion on whether the WPIC should continue to receive the report from the task force. He said information on how money will be dispersed in the future won't be available until after the next legislative session.
- 04:53:56 **Motion:** Rep. Williams moved that the WPIC continue to receive updates from the Clark Fork River Basin Task Force.

Discussion:

- 04:54:07 Sen. Vincent
- 04:55:02 Ms. Franz

- 04:55:52 **Vote:** The motion carried unanimously by voice vote of those present and voting.

WATER POLLUTION CONTROL ADVISORY COUNCIL (2-15-2107, MCA)

- 04:56:15 Barb Chillcott, WPCAC, presented information on the advisory council and its activities. [\(Exhibit 8\)](#)

Public Comment: None

Committee Questions and Discussion:

- 05:01:35 Rep. Williams said she is a public member of the WPCAC.
- 05:02:01 Sen. Vincent asked Ms. Chillcott about WPCAC's support for the DEQ implementing numeric standards variances and compliance schedule.
- 05:03:30 Sen. Vincent asked Ms. Chillcott if WPCAC was part of the numeric nutrient standard working group and had provided feedback.
- 05:04:35 Sen. Hamlett asked if the WPCAC has discussed the issue of pharmaceuticals in water. Ms. Chillcott said not since she has been on the council.
- 05:05:15 Sen. Hamlett asked if the WPCAC looks only at current events or if it speculates on what could happen in the future.
- 05:06:20 Sen. Hamlett opened discussion on whether the WPIC should continue to receive the WPCAC report.
- 05:06:58 Rep. Glimm asked about funding. Ms. Chillcott said members are reimbursed for their travel expenses.
- 05:07:42 Rep. Williams said that many council members participate in the meetings by phone.
- 05:08:06 Sen. Vincent asked Rep. Williams if she is currently a member of the WPCAC. Rep. Williams said she is.
- 05:08:38 Sen. Vincent asked Rep. Williams about the number of meetings per year and the issues that the WPCAC is involved in.

- 05:11:55 Sen. Hamlett asked Ms. Chillcott if there is a legislative member on the WPCAC. Ms. Chillcott said there is not.
- 05:13:11 **Motion:** Rep. Glimm moved that the WPIC continue to receive reports from the WPCAC.
- 05:13:44 Mr. Mohr said that the statute directs interim committees to review the established advisory councils and recommend their retention or elimination.
- 05:14:07 **Substitute Motion:** Rep. Glimm made a substitute motion that the WPCAC be eliminated.

Discussion:

- 05:14:56 Sen. Hamlett
- 05:15:24 Sen. Vincent
- 05:15:47 George Mathieus, deputy director, DEQ
- 05:15:56 Sen. Vincent
- 05:16:43 Mr. Mathieus
- 05:17:56 Sen. Vincent
- 05:18:15 Mr. Mathieus
- 05:18:26 Sen. Vincent
- 05:18:45 Mr. Mathieus
- 05:19:07 Sen. Vincent
- 05:19:30 Mr. Mathieus
- 05:19:41 Sen. Hamlett
- 05:20:06 Sen. Vincent
- 05:20:17 **Substitute Motion/Vote:** Sen. Vincent made a substitute motion to keep the WPCAC and to find out its cost. The motion carried 6-1 with Rep Glimm voting no. Sen. Fielder was excused.
- 05:20:56 Rep. Williams requested that the minutes for the WPCAC meetings be added to the website.
- 05:21:40 Recess
- 05:39:00 Reconvene

WATERSHED CAPACITY GRANTS

- 05:39:30 Laurie Zeller, bureau chief, Conservation Districts Bureau, DNRC, presented information on the watershed grant program.
- 05:40:06 Sen. Hamlett asked Ms. Zeller about the available grant money.
- 05:41:08 Rep. Z. Brown asked Ms. Zeller to clarify the amount of money available for the next biennium.
- 05:42:04 Sen. Vincent asked Ms. Zeller how much money goes to the Conservation District Capacity Building program and to the Watershed Capacity Grant program.

SJ2 STUDY OF FEDERAL 404 PERMITTING

05:42:48 Mr. Mohr presented a summary of the SJ2 draft report and findings. [\(Exhibit 9\)](#)

Committee Questions and Discussion:

- 05:46:57 Sen. Vincent thanked staff for the report. He asked Mr. Mohr if there will be an increase in the number of permits required under the rule.
- 05:48:29 Rep. Williams said it would be helpful to include information from the U.S. Army Corps of Engineers on the proportion of nationwide permits.
- 05:50:09 Jeff Ryan, supervisor, Lewis and Clark Conservation District, said before he retired from the DEQ he was involved in issuing 401 certifications of the Corps 404 permits and gave his perspective on state assumption. [\(Exhibit 10\)](#)
- 06:00:13 John North, chief legal counsel, DEQ, presented information comparing the extent of the state's authority to regulate waters and the federal authority for discharge and 404 permits.

Public Comment:

- 06:03:26 Jeff Tiberi, Montana Conservation Districts, provided an update on the Assumable Waters Federal Advisory subcommittee.

Committee Questions and Discussion:

- 06:06:12 Sen. Hamlett asked Mr. Ryan about the option for conservation districts to defer to the DEQ if they choose not to handle 404 permits.
- 06:09:32 Sen. Hamlett asked Mr. Ryan about timing constraints when decisions are not made locally.
- 06:10:43 Sen. Vincent asked Mr. Tiberi about dissent from the Corps. Mr. Tiberi said he will provide a copy of the article to staff.
- 06:11:53 Sen. Vincent asked Mr. North if the EPA, under the Clean Air Act or the Clean Water Act, ever used its oversight to veto a permit at the state level because of undue political influence. Mr. North said he did not recall a time.
- 06:13:19 Sen. Vincent asked Mr. Ryan about the Montanore Mine proposal and the Least Environmentally Damaging Practical Alternative (LEDPA) and if he thought the state could interpret it differently than the Corps and speed up the permitting process.
- 06:16:34 Mr. Ryan said the process could be quickened somewhat.
- 06:17:09 Rep. Williams asked Mr. Ryan about keeping the responsibility for 310 permit decisions with the conservation districts.
- 06:20:00 Rep. Williams asked if Montana is fortunate because it is one of the few states that has a state Corps office and a lot of decisions are made closer to home. Mr. Ryan said it is and that every state in the Corps district has a state program office. He said a lot of the simple nationwide permitting that occurs is done in the Montana office, but for 404 permits, like the one for the Montanore Mine project, are done in Omaha.

06:21:23 Rep. Williams said that whatever happens with the WOTUS rule Montana's mandate to protect clean water is geographically more extensive than the proposed rule. Mr. North agreed. She said wetlands are also considered state waters, but it is unclear if dredge or fill material deposited into a wetland would be considered waste under the current statutes and that is why it may need to be clarified if the state takes over 404 permitting. Mr. North said that is an issue.

06:25:06 Rep. Williams asked Mr. North about adjacent water, and if it is included into federal jurisdiction, if Montana already has a responsibility to protect it under current state law. Mr. North said Montana is required by law to protect the quality of that water, but doesn't have the authority to regulate dredge and fill.

06:26:52 Sen. Hamlett said the reason he brought the bill was because if the rule is changed a lot of the 310 permitting will cease to exist because the federal government's reach will go farther up the stream and require 404 permits.

06:27:49 Sen. Vincent asked if the WPIC has made any recommendations. Sen. Hamlett said there hasn't been any recommendations for legislation. He said the committee needs to make a motion to submit the report for public comment. Sen. Vincent said he recommends discussing potential legislation at the meeting tomorrow.

06:28:58 Sen. Vincent said if adjacent water is included into federal jurisdiction it will put a federal nexus on land where there previously was no dredge-and-fill requirement and it will be administered by the federal government. He said he would like to consider looking at contingent legislation if the WOTUS rule is passed.

06:32:51 Rep. Z. Brown said a next step could be to encourage DEQ to apply for federal grants available to states that are considering state assumption.

06:33:35 Sen. Vincent asked about federal grants. Mr. Mohr said the next time states can apply for the grants is in 2018. He discussed other options for the WPIC to consider.

06:34:52 Sen. Hamlett said a discussion about legislation can be done at the meeting tomorrow, and the committee needs to decide if the report should be submitted for public comment.

06:35:31 Sen. Stewart Peregoy said she is concerned about the cost for state assumption of the program.

06:37:40 Rep. Williams said that in order to get meaningful public comment the report needs to include information on the fee that the state will charge and how that compares to streamlining and speeding up the process. She asked if staff could give a cost estimate. Mr. Mohr said that he could submit it into the Corps to see if they can give a breakdown. Rep. Williams said the WPIC may want to include recommendations for potential direction in the report.

06:41:16 Sen. Hamlett asked Mr. Mohr if cost estimates are on the high or low side. Mr. Mohr said the estimates are conservative on both sides.

06:42:15 Sen. Hamlett said he recommends contacting the states that have assumed the 404 permits to find out what they charge. He said if the federal government changes the rule it will change 310 permits and there will be more 404 permits. He said the state needs to determine its best option.

06:44:02 Rep. Williams said she recommends that the WPIC release the report for public comment and include four options for the public to comment on. Sen. Hamlett and Sen. Vincent agreed.

06:47:07 Mr. Mohr said he can draft the options into committee recommendations.

06:47:57 Rep. Z. Brown said he agreed on putting the options out for public comment and to include Mr. Ryan's recommendation on establishing a fee sharing agreement and working relationship with conservation districts.

06:49:12 Sen. Hamlett said that if the rule is changed conservation districts will not be able to do as much as they did in the past because of different classifications and permits.

06:49:45 Sen. Stewart Peregoy said she recommends looking at Michigan and New Jersey to find out their start-up and maintenance costs.

06:51:30 Sen. Hamlett asked Mr. Ryan if there are knowledgeable people working in state government that can do the work if the state assumes the program.

06:52:53 Rep. Glimm said he recommends asking Michigan and New Jersey about the number of nationwide and individual permits they handle.

06:53:28 Rep. B. Brown said he recommends finding out the percentage of permits that are reviewed by the EPA.

06:54:56 Rep. Williams said the 404 program is about wetland conservation. She said she recommends seeking comments from the DEQ's Wetland Program and from the Montana Wetland Council.

06:56:34 Sen. Hamlett said if the rules change he doesn't see it as an expansion of the wetlands, but more of an expansion of the reach on streams.

06:57:02 Sen. Hamlett said the discussion will continue tomorrow.

06:57:30 Rep. Williams asked staff to provide a summary of the options.

07:00:54 Sen. Hamlett said the WPIC will take action tomorrow.

07:01:33 Sen. Hamlett recessed the meeting at 4:15 p.m.