



Water Policy Interim Committee

64th Montana Legislature

SENATE MEMBERS

JENNIFER FIELDER
BRADLEY MAXON HAMLETT
SHARON STEWART-PEREGOY
CHAS VINCENT

HOUSE MEMBERS

BOB BROWN
ZACH BROWN
CARL GLIMM
KATHLEEN WILLIAMS

COMMITTEE STAFF

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

MINUTES LOG

June 2, 2015
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.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select Committees, then Interim. Once on the page for Interim Committees, scroll down to the appropriate committee. The written Minutes Log, along with the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the Exhibits is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed.

Please contact the Legislative Services Division at 406-444-3064 for more information.

COMMITTEE MEMBERS PRESENT

SEN. BRADLEY MAXON HAMLETT, chair
REP. CARL GLIMM, vice chair

SEN. JENNIFER FIELDER
SEN. CHAS VINCENT

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

COMMITTEE MEMBERS EXCUSED

SEN. SHARON STEWART-PEREGOY

STAFF PRESENT

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

AGENDA & VISITORS' LIST

Agenda, Attachment 1.
Visitor's List, Attachment 2.

COMMITTEE ACTIONS

- The WPIC adopted the 2015-16 committee work plan.
- The WPIC adopted the interim meeting dates as amended.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Hamlett called the meeting to order at 9 a.m. The secretary noted the roll, Attachment 3.

WATER SUPPLY OUTLOOK

00:00:22 Tim Davis, administrator, Water Resources Division, Department of Natural Resources and Conservation, presented the governor's report on the potential for drought and flooding in the state, Exhibit 1.

00:12:09 Mike McLane, water conservation specialist, Fisheries Bureau, Department of Fish, Wildlife and Parks, presented the water supply outlook in the state based on data gathered by the U. S. Department of Agriculture/Natural Resource Conservation Service, U.S. Geological Service, and the National Oceanic and Atmospheric Administration, Exhibit 2.

Public comment: None

Committee questions and discussion:

00:32:07 Sen. Fielder asked Mr. McLane if projections are later compared to actual data.

00:33:58 Sen. Fielder asked Mr. McLane about making calls on water and if irrigators' needs are factored in before making calls for fish.

00:37:22 Sen. Fielder asked Mr. McLane if collaborative efforts to manage water without making a call is in place in northwest Montana.

00:38:57 Sen. Fielder asked Mr. McLane which programs need funding support from the Legislature.

00:40:40 Sen. Vincent asked Mr. McLane about collaborative efforts in northwest Montana.

00:42:50 Rep. Williams asked Mr. McLane about replacing the loss of SNOTEL sites with LIDAR and if support from the Legislature will be helpful.

00:45:21 Rep. Williams asked Mr. McLane if there are any statutory issues involved in water-sharing agreements.

00:46:55 Rep. Williams asked Mr. Davis about the fire forecast for the year.

00:48:08 Rep. Williams asked Mr. Davis about the model project in Montana being used by the National Drought Resilience Partnership.

- 00:50:35 Rep. Williams asked how the committee can continue to be updated on the state's water supply.
- 00:51:20 Rep. Zach Brown asked Mr. McLane about the status of cutthroat trout and possible listing on the ESA.
- 00:55:04 Sen. Hamlett commented on the elimination of federal earmarks and funding sources. He also commented on the use of LIDAR.
- 00:55:55 Sen. Hamlett asked Mr. Davis if there has been any discussion on advancing the date when irrigation projects can turnout water because of early snow melt.

WATER RIGHT ADJUDICATION UPDATE (75-5-313, MCA)

- 00:57:39 Mr. Davis gave the adjudication update from the Department of Natural Resources and Conservation, Exhibit 3.
- 01:02:10 Russ McElyea, chief water judge, Montana Water Court, gave the adjudication update from the Water Court, Exhibit 4.
- 01:12:05 Mr. McElyea discussed SB 37 (2015).
- 01:13:12 Mr. McElyea provided copies of the study completed by the University of Montana, Exhibit 5.
- 01:14:10 Mr. McElyea asked the committee to consider watershed-level problem solving in its work plan.

Public comment: None

Committee questions and discussion:

- 01:15:25 Sen. Fielder asked Mr. McElyea about any changes he recommends to SB 37.
- 01:16:14 Sen. Vincent asked Mr. Davis about grant money available for watershed groups.
- 01:17:47 Sen. Vincent asked Mr. Davis about the U.S. Forest Service Compact and requested that the WPIC be kept updated. Jason Mohr, research analyst, Legislative Services Division, said that a report is tentatively scheduled to be given by the USFS at future meetings.
- 01:19:50 Rep. Williams asked Mr. McElyea about legislative proposals related to water rights in Montana.
- 01:22:58 Sen. Vincent asked Mr. McElyea about the timeline for temporary preliminary decrees.
- 01:25:53 Sen. Hamlett discussed SB 37.
- 01:27:27 Recess
- 01:41:54 Reconvene

OVERVIEW OF GROUND WATER PROGRAMS (85-1-2-3, MCA)

- 01:42:04 John Metesh, director, Montana Bureau of Mines and Geology, gave a PowerPoint presentation on the ground water program, Exhibit 6. He said the WPIC was provided with a copy of the biennial report of activities and programs, Exhibit 7.

01:54:42 John LaFave, senior research hydrologist and program manager, Ground Water Assessment Program, Montana Bureau of Mines and Geology, discussed the Groundwater Assessment Program, Exhibit 8.

02:09:48 Ginette Abdo, senior research hydrologist and program manager, Ground Water Investigation Program, Montana Bureau of Mines and Geology, discussed the Ground Water Investigation Program, Exhibit 9.

Public comment: None

Committee questions and discussion:

02:26:23 Rep. Glimm asked Mr. LaFave if free-flowing artesian wells need to be permitted.
02:27:45 Mr. LaFave referred the question to Mr. Davis for additional information.
02:28:10 Sen. Hamlett asked Mr. Davis about artesian wells.
02:29:01 Rep. Williams asked Mr. Mohr about the statutory requirement for updates on the Ground Water Investigation Program.
02:30:11 Sen. Hamlett asked Mr. Metesh about 2015 legislative funding for the Ground Water Investigation Program.

NUMERIC NUTRIENT STANDARDS REPORT (75-5-313, MCA)

02:31:58 Eric Urban, bureau chief, Water Quality Standards Section, Department of Environmental Quality, gave a report on nutrient criteria and variance process.

Public comment: None

Committee questions and discussions:

02:36:53 Sen. Vincent asked Mr. Urban about a stakeholder group on Flathead Lake.

FUTURE FEDERAL WATER QUALITY STANDARDS

02:38:41 Mr. Urban provided information on how the DEQ interacts with federal standards.
02:41:11 Mr. Urban discussed new federal water quality standards on ammonia.
02:44:54 Mr. Urban discussed federal standards on fish tissue-based criteria.
02:47:49 Mr. Urban said there are other standards for pharmaceuticals and plasticizers.

Public comment: None

Committee questions and discussion:

02:49:00 Sen. Vincent asked Mr. Urban about preliminary reports on ammonia issues with regard to lagoons.
02:50:17 Sen. Vincent asked about fish tissue-based criteria.
02:51:36 Sen. Vincent asked about standards on selenium.

- 02:53:37 Sen. Vincent asked about future issues the WPIC should focus on in its work plan.
- 02:55:46 Rep. Williams asked Mr. Urban about the timeline for methylmercury fish tissue criteria.
- 02:58:43 Sen. Hamlett asked Mr. Urban about the relationship Montana has with the EPA.
- 02:59:47 Sen. Hamlett asked Mr. Urban if there will be a push from the federal government to eliminate the lagoon system in favor of full treatment sewage systems.
- 03:01:12 Sen. Hamlett asked Mr. Urban if there will be pressure in the future to treat storm water discharge.
- 03:02:11 Rep. Williams asked Mr. Urban if cleaner water coming down a watershed will lead to less investment by downstream water suppliers to clean water for their use.
- 03:02:40 Rep. Zach Brown asked Mr. Urban why selenium is found in different systems.
- 03:04:28 Sen. Hamlett asked Mr. Urban to define a non-flowing lake.

CSKT COMPACT IMPLEMENTATION UPDATE

- 03:05:18 Mr. Davis discussed the implementation schedule for the CSKT Compact, Exhibit 10, and provided information on adaptive management and the compact implementation technical team, Exhibit 11.

Committee questions and discussion:

- 03:09:57 Sen. Vincent asked Mr. Davis to explain the practical implementation of the Milltown Dam water right.
- 03:11:27 Sen. Fielder asked Mr. Davis the amount and the source of funding allocated for implementation of the compact.
- 03:12:14 Sen. Fielder asked Mr. Davis how the funds are being spent.
- 03:12:37 Sen. Fielder asked Mr. Davis under what authority the compact is being implemented.
- 03:13:24 Sen. Fielder asked if some of the compact has become state law under Title 85. Mr. Davis said the compact has been ratified by the state of Montana and different portions become effective at different times.
- 03:14:00 Mr. Mohr stated a section of the compact related to implementation.
- 03:13:19 Sen. Fielder asked how the state has the authority to implement the compact before it is approved by the U.S. Congress. Helen Thigpen, staff attorney, Legislative Services Division, discussed ratification of the compact.
- 03:15:28 Sen. Fielder restated her question. Sen. Vincent discussed compact implementation. Ms. Thigpen said the authority is in the compact.
- 03:15:16 Sen. Vincent discussed compact implementation.
- 03:18:34 Sen. Hamlett requested that staff provide information on the implementation of the compact.
- 03:19:08 Ms. Thigpen gave an update on the litigation involving the Flathead Joint Board of Control v. State of Montana.

Committee questions and discussion:

- 03:25:19 Sen. Fielder asked Ms. Thigpen if there are any restrictions or guidelines that legislators need to be aware of as defendants in the lawsuit.
- 03:26:46 Rep. Williams asked Mr. Davis about the deadline for the tribes to file claims for water rights.
- 03:28:12 Sen. Fielder asked Mr. Davis about the water right claims the tribe are expected to file.
- 03:29:39 Sen. Vincent commented on some things that can be done before the compact is ratified by Congress.
- 03:32:00 Sen. Hamlett said a gag order has not been issued in the lawsuit.
- 03:32:41 Recess
- 04:42:00 Reconvene

ADOPTION OF COMMITTEE WORK PLAN

Committee discussion:

- 04:42:55 Sen. Vincent said the committee consider saving full time equivalents (FTE) for issues that may arise during the interim.
- 04:43:53 Sen. Vincent commented on the FTEs needed for the dredge and fill study.
- 04:45:00 Sen. Vincent commented on the member suggestions, Exhibit 12.
- 04:45:46 Sen. Vincent commented on the programmatic evaluation and the new statutory duties for the WPIC under SB 82 (2015).
- 04:47:43 Rep. Zach Brown agreed there needs to be some flexibility in the work plan for issues that may arise during the interim and that adequate time should be given for the Water Court, new water quality standards for ammonia, water marketing, and water banking.
- 04:49:00 Rep. Glimm agreed on saving time for additional issues and said exempt wells are an important issue.
- 04:49:55 Rep. Bob Brown agreed on time for exempt wells, LIDAR, dredge and fill permits, and water quality standards for ammonia.
- 04:52:17 Sen. Fielder said the top priority should be oversight of agency rulemaking and agency actions. She said that the Clean Water Act and 404 permits should be a high priority, as well as public notification under SB 37 and water quality standards for ammonia.
- 04:54:07 Rep. Williams commented on member suggestions.
- 05:00:48 Sen. Hamlett summarized the priorities expressed by the WPIC and his recommendations on the work plan.

Public comment:

- 05:13:29 Brent Campbell, CEO, WGM Group, talked about infrastructure finance in Montana and how it affects water policy.

Committee discussion continued:

- 05:18:35 Rep. Williams discussed water supply and infrastructure.
05:20:05 Sen. Vincent recommended a draft work plan.
05:25:23 Sen. Fielder agreed with Sen. Vincent's recommendation.
05:26:00 Sen. Hamlett asked Rep. Glimm and Rep. Bob Brown their opinion about the amount of time given to exempt wells.
05:26:20 Rep. Bob Brown said he felt his concerns can be addressed in the amount of time given and commented on giving jurisdiction of pipeline crossings a higher priority.
05:28:06 Rep. Glimm discussed Sen. Vincent's work plan.
05:28:39 Mr. Mohr summarized the draft work plan.
05:34:09 Sen. Fielder commented on agency overviews.
05:35:25 Sen. Hamlett commented on the difference between natural artesian wells, and ones that result from drilling.
05:36:05 Rep. Zach Brown agreed with the proposed work plan.
05:36:38 Rep. Bob Brown clarified the amount of FTE for the future of the Water Court. Sen. Hamlett and Sen. Vincent also commented on the Water Court.
05:41:13 Sen. Hamlett requested the WPIC be provided with copies of the study report and two committee bills.
05:41:40 Rep. Williams commented on grouping FTE for exempt wells with water supply/availability and on FTE for the Water Court.
05:44:17 Sen. Fielder suggested a work plan.
05:45:15 Rep. Zach Brown suggested taking FTE from the water plan infrastructure instead of from the Water Court.
05:45:55 Sen. Fielder said more time should be spent on SJ 2.
05:47:28 **Motion:** Sen. Fielder moved to adopt the work plan with .10 FTE for the Water Court, .15 FTE for water availability and supply, .15 FTE for SJ 2, .15 FTE for statutory oversight, .10 FTE for program evaluations and .15 FTE for any other issues during the interim.

Discussion:

- 05:48:04 Sen. Vincent
05:49:35 Sen. Hamlett
05:50:55 **Vote:** The motion carried unanimously by voice vote. Sen. Stewart-Peregoy voted by proxy, Attachment 4.

Committee questions and discussion:

- 05:51:32 Rep. Williams asked Mr. Mohr if an update on the Ground Water Investigation Program needs to be included at every meeting.
05:53:31 Rep. Williams asked about statutory duties for water related research and if the Montana Water Center will give reports.

ADMINISTRATIVE MATTERS

05:55:06 Mr. Mohr, gave an overview of the WPIC budget.

Committee questions and discussion:

05:55:54 Sen. Hamlett asked Mr. Mohr if there will be enough money in the budget for an extra meeting.

05:26:24 Rep. Williams commented on the Pacific Northwest Economic Region meeting on July 14.

05:57:17 Sen. Vincent said that Legislative Council is providing resources for people interested in attending the meeting.

06:01:15 Mr. Mohr discussed the WPIC interim calendar meeting dates, Exhibit 13.

06:03:10 Committee discussion on the WPIC meeting dates.

06:12:52 **Motion:** Rep. Bob Brown moved to change the September meeting to September 2 and 3, 2015 and to adopt the remaining dates as scheduled.

Discussion:

06:13:18 Rep. Williams

06:13:36 Sen. Fielder

06:14:07 Mr. Mohr

06:14:25 Sen. Hamlett

06:14:38 **Vote:** The motion carried unanimously by voice vote of those present and voting.

PUBLIC COMMENT ON ANY ISSUE WITHIN THE JURISDICTION OF THE WPIC

None

OTHER BUSINESS

06:15:30 Sen. Vincent encouraged members of the WPIC to look at minutes from past meetings. He said he will forward any copies that are in digital format.

06:17:10 Rep. Williams asked staff to forward copies of the publications *Water Rights in Montana* and *A Guide to Montana Water Quality Regulations* to the committee members. She requested that the committee be updated on the drought status and any other issues affecting the WPIC.

06:20:05 Sen. Hamlett recommended that the committee members read *Cadillac Desert*.

INSTRUCTIONS TO STAFF

06:21:19 Sen. Hamlett asked staff to provide links on the website for committee members and the public.

06:24:14 Sen. Hamlett adjourned the meeting at 3:25 p.m.

CI0099 5169nsxb.