



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

May 2, 2016

Bozeman City Commission Chambers
Bozeman, 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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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. 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)

CALL TO ORDER AND ROLL CALL

- 00:00:01 Sen. Hamlett called the meeting to order at 9:04 a.m. The secretary called the roll. **(Attachment 3)** Sen. Fielder was excused.
- 00:00:41 Jason Mohr, research analyst, Legislative Services Division, thanked the city of Bozeman for hosting the WPIC and provided information about the meeting and afternoon field trip.
- 00:02:34 Sen. Hamlett also thanked the city of Bozeman and said meeting in Bozeman allows the WPIC an opportunity to interact with the community and hear about their concerns regarding water issues.

CASE STUDIES OF WATER SUPPLY OPTIONS

- 00:03:32 Deborah Stephenson, water right consultant, DMS Natural Resources, LLC, gave a PowerPoint presentation and provided an overview of water supply options being considered in Montana. **(Exhibit 1)**
- 00:17:28 Rep. Williams said the current topic is related to the WPIC work plan on water supply for growing communities. She said agenda items were switched in order to give committee members some background information before the afternoon tours.
- 00:18:12 Craig Woolard, director, Public Works Department, city of Bozeman, presented a PowerPoint presentation and gave an overview of how Bozeman approaches water supply and some of the issues and concerns when providing municipal water services. **(Exhibit 2)**
- 00:23:52 Mr. Woolard discussed new water supply alternatives.
- 00:25:56 Mr. Woolard discussed challenges that Bozeman and all other municipalities face providing water supply.
- 00:29:34 Mr. Woolard discussed Bozeman's water supply initiative.
- 00:31:51 Brian Popiel, chairman, Southwest Montana Building Industry Association, presented the development industry's view on water supply and their ability to provide affordable, predictable, and safe housing in a growth environment.
- 00:37:13 Mr. Popiel discussed community water systems and said the WPIC will tour a community water system.
- 00:40:45 Mr. Popiel discussed mitigation concerns.

- 00:43:53 Colleen Coyle, water rights attorney, Farmer's Canal Company of Gallatin Valley, presented information on its project to identify, evaluate, and analyze elements of its water rights.
- 00:46:44 Krista Lee Evans, representing Association of Gallatin Agricultural Irrigators (AGAI), discussed the challenge of protecting existing water rights while trying to meet new demands for use of the water supply.

Public Comment:

- 00:55:57 Clinton Cain, retired mining engineer, discussed community water systems. **(Exhibit 3)**
- 01:03:37 Tony Kolnik, Helena, discussed the water supply in Bozeman.
- 01:11:08 Rep. Kerry White, HD 64, discussed water in the Gallatin River and irrigation practices affecting groundwater levels.
- 01:17:39 Joe Gutkoski, president, Montana River Action, discussed emergency stream flow for important fisheries in Montana. **(Exhibit 4)**

Committee Questions and Discussion:

- 01:21:15 Sen. Vincent asked Mr. Popiel about high density development.
- 01:22:32 Sen. Vincent asked Mr. Popiel about the average density per subdivision.
- 01:23:38 Rep. Williams asked Mr. Popiel about the minor subdivisions developed since Judge Sherlock's decision.
- 01:24:37 Rep. Williams asked Mr. Popiel about future water needs and the preference for lawns. Mr. Popiel said there is a lot of diversity in opinion.
- 01:26:55 Rep. Williams asked Mr. Popiel about concerns regarding changes in the mitigation statutes and the downstream effect. Mr. Popiel said the building industry is concerned about price implications that will be passed on to the home buyer.
- 01:28:21 Rep. Williams asked Mr. Woolard about the new water treatment system and if there is a reduced risk for damage from a wildfire in the Hyalite watershed. Mr. Woolard said the new water treatment system was designed to deal with the potential impacts from a wildfire.
- 01:30:20 Sen. Vincent asked Mr. Woolard about the project the city is working on with the U.S. Forest Service.
- 01:31:36 Sen. Vincent asked Mr. Woolard about Montana State University's water rights. Mr. Woolard said MSU has about 500 shares of Hyalite Reservoir water.
- 01:33:18 Sen. Vincent asked Mr. Woolard about water storage opportunities to catch pre-season flows. Mr. Woolard said that groundwater supply is a large reservoir of storage and the city is looking at ways to improve natural watershed storage at Sourdough Basin.
- 01:34:27 Sen. Hamlett asked Mr. Woolard about the city's biggest challenge in its conservation program with the public. Mr. Woolard said it is outdoor water use.
- 01:35:46 Rep. B. Brown asked Mr. Woolard about the water rights owned by MSU and what volume of water 500 shares represents. Mr. Woolard said a share is equal to an acre foot.

01:36:05 Rep. B. Brown asked Mr. Woolard if MSU's water right is included in the graph showing future use and if the city uses MSU's shares to supply its water. Mr. Woolard said the graph shows projected water demand and MSU is included in the demand analysis.

01:37:27 Sen. Hamlett asked Mr. Woolard if the city pays MSU for any of the water they have in the the Hyalite Reservoir. Mr. Woolard said it does not and that MSU is charged for its water on a monthly basis.

01:37:46 Rep. Williams asked Mr. Woolard about the graph showing per capita per use per day and how it is trending, what kind of goal is set, and how it is benchmarked. Mr. Woolard explained the city's goals and objectives.

01:40:58 Sen. Williams asked Mr. Woolard about water conservation. Mr. Woolard said people have been very receptive to water conservation efforts and the city has saved millions of gallons of water in just a couple of years.

01:41:28 Sen. Vincent asked Ms. Evans about Farmer's Canal and how prepared it is to move forward when decrees become enforceable.

01:43:16 Sen. Vincent asked Ms. Evans if changes need to be made to the current laws on mitigation banking.

01:46:29 Sen. Hamlett asked Ms. Evans about the conveyance infrastructure and if AGAI feels it is important to keep control of the mitigation process rather than a third party. Ms. Evans said it does.

01:49:30 Sen. Hamlett asked Ms. Evans if AGAI will look at permanently selling mitigation water or look at leasing mitigation water.

01:50:41 Rep. Z. Brown asked Ms. Evans about the steps canal companies need to take when considering mitigation banking.

01:53:45 Sen. Hamlett asked Ms. Coyle about the importance for water rights holders to reflect their current practices in articles and bylaws.

01:55:09 Sen. Hamlett asked Ms. Coyle if MSU is in danger of having its water right shares compromised because of non-use of shares.

01:56:47 Sen. Hamlett asked Ms. Coyle if MSU would benefit by entering into a lease agreement with the entity using its water.

01:57:46 Sen. Hamlett asked Ms. Coyle if it is beneficial for water rights holders and users to reflect their current practices. Ms. Coyle said it is.

01:59:23 Sen. Hamlett asked Ms. Stephenson about the seasonal use of agricultural water for other uses and year-round use of the water.

02:01:35 Sen. Hamlett asked if community-based water systems are dependent upon groundwater. Mr. Popiel said he did not know. Sen. Hamlett re-referred the question.

02:02:51 Tim Davis, administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC), said it depends on the area where the system is being developed.

02:03:13 Rep. Williams said she sent a note to the Department of Environmental Quality (DEQ) about the issue raised by Mr. Cain during public comment.

02:03:44 Sen. Hamlett said someone from DEQ will be at the meeting tomorrow.

02:04:01 Sen. Vincent commented on access to and the cost of water from Hungry Horse Dam in the Confederated Salish and Kootenai Tribe (CSKT) water rights compact.

UPDATE FROM GOVERNOR'S DROUGHT AND WATER SUPPLY ADVISORY COMMITTEE

- 02:05:39 Mr. Davis, DNRC, provided an update on the amount of precipitation received and the potential for drought in the state.
- 02:08:25 Mr. Davis discussed stream flows.
- 02:09:08 Mr. Davis discussed the long-term forecast.
- 02:09:47 Mr. Davis said the Governor's Drought and Water Supply Advisory Committee will meet on May 19.

Public Comment: None

Committee Questions and Discussion:

- 02:10:26 Rep. Z. Brown asked Mr. Davis about the water planner that was hired by the DNRC to oversee the advisory committee. Mr. Davis said the department hired Ada Montague.
- 02:12:01 Sen. Hamlett asked Mr. Davis about the reports and how far back they look. Mr. Davis said they look back at a 30-year period.
- 02:13:06 Sen. Hamlett asked Mr. Davis if it is possible to look back 40 years. Mr. Davis said it can be done, but the models are set up for 30 years.
- 02:13:26 Sen. Hamlett asked Mr. Davis if the new normal means less water. Mr. Davis said the State Water Plan did look back at times when there was significant drought.

STATE WATER PLAN UPDATE (85-1-203, MCA)

- 02:14:10 Mr. Davis, DNRC, presented an update on the State Water Plan.

Public Comment:

- 02:19:52 Clinton Cain, retired mining engineer, asked why the outflows at Four Corners were never inspected.

Committee Questions and Discussion:

- 02:20:31 Sen. Vincent asked Mr. Davis to respond to the question asked by Mr. Cain. Mr. Davis said problems related to outflows are a water quality issue. He said the DEQ will be at the meeting tomorrow and can address the issue then.
- 02:21:16 Sen. Vincent asked Mr. Davis about the Surface Water Assessment and Monitoring Program (SWAMP) and how it will play a role in looking at water measurements for the CSKT compact. Mr. Davis said the CSKT compact technical team has a meeting scheduled for later in May and will be looking at water measurements.
- 02:22:22 Sen. Vincent asked John Metesh, director, Montana Bureau of Mines and Geology (MBMG), if the MBMG will be involved in creating the information for the SWAMP program. Mr. Metesh said the technical part has not been worked out yet.
- 02:23:57 Rep. Z. Brown asked Mr. Davis about the number of state-owned U.S. Geological Survey (USGS) gauge stations. Mr. Davis said most of the USGS gauges are located on the mainstems and the state-owned gauges will help fill in gaps.
- 02:25:41 Rep. Z. Brown asked Mr. Davis to describe the scoping process for choosing gauge locations.

02:27:25 Rep. Z. Brown asked Mr. Davis about the process when a landowner objects to the location of a gauge.

02:29:10 Recess

02:39:51 Reconvene

FUTURE OF THE WATER COURT STUDY

Water Rights Ownership Updates

02:40:40 Linda Stoll, Montana Association of Clerks and Recorders, via phone, said the clerks and recorders office never receives water right ownership transfer information and that the county assessor is not part of their office. **(Exhibit 5)**

02:42:45 Rocky Haralson, regional manager, Property Assessment Division, Department of Revenue (DOR), said the DOR has authority for assessment purposes and is responsible for all of the valuations of real and personal property. He said as a result the county assessor does not have any assigned duties and there is only one elected county assessor in the state.

02:44:30 Mr. Haralson said that John Morrow and Mark Olson from the DOR are present and available to answer questions.

02:44:51 Mr. Haralson discussed the issue that 40 percent of water rights transfer certificates are submitted without processing.

02:46:06 Mr. Haralson discussed the issue that counties are inconsistent in sending real estate transfers to the DOR with some taking up to six months.

02:48:01 Mr. Haralson discussed the issue that the system has not been automated.

02:48:51 Mr. Haralson discussed whether there is a way to make the county downloads more consistent, how much would it cost, and would the counties be willing and able to comply.

02:49:38 Mr. Haralson discussed whether it is possible to attach geocodes to the place of use.

02:51:32 Mr. Haralson discussed whether it would be more cost and time efficient to identify one employee that does all ground truthing on geocodes.

02:52:40 Mr. Morrow explained the process that the DOR uses to transfer data to the DNRC.

02:54:07 Mr. Davis, DNRC, said he has contacted the DOR, the Montana Association of Clerks and Recorders, and title companies to put together a working group. It will look at different perspectives on ownership updates and the different roles in order to come back to the WPIC with potential legislative fixes or a public education outreach campaign. Mr. Davis said the department is also looking at how to handle splits of land when a water right is intended to be kept in common ownership.

Committee Questions and Discussion:

02:57:49 Rep. Z. Brown asked Mr. Davis about the special revenue account. Mr. Davis said the funds are from the fees DNRC receives from ownership updates and water right applications. The funds were used to help staff regional offices that process ownership updates.

02:58:55 Rep. Glimm asked Mr. Davis about the issue with timeliness and updating ownership records. Mr. Davis said one of the goals of the working group is to find a way to make the process work better.

03:01:28 Rep. Williams asked Mr. Davis about the information available on the realty transfer certificate.

03:02:08 Rep. Williams asked Mr. Davis about putting more information on one form.

03:03:14 Rep. Williams asked Ms. Stoll if she wanted to add any additional information. Ms. Stoll said that two forms are used, the realty transfer certificate that goes to the clerk and recorders office, and the water right ownership form. She said there needs to be additional public education so that new owners know they have the obligation to submit the forms and pay the required fees to the DNRC.

03:05:11 Sen. Hamlett asked Ms. Stoll about the legal requirement when property is sold in the state and what happens with the deed. Ms. Stoll said she did not know, but said the deed needs to be filed.

03:05:39 Sen. Hamlett requested that staff find out about the statute and what is required by law.

03:06:23 Sen. Hamlett said that because water rights can either be transferred or sold separate from pieces of property, they are not always recorded on the deed. Ms. Stoll agreed.

03:07:43 Mr. Davis said if the water right is severed from the land it would not be transferred with the real property. He said if the deed is silent and there is a water right associated with it, the water right, by law, transfers with the land.

03:08:42 Ms. Stoll said there may be cases when a water right does not always transfer with the land when a deed is silent.

03:09:53 Sen. Hamlett asked Mr. Haralson about the legal requirement when real property is sold and the deed. Mr. Haralson said realty transfer certificates must be completed and filed along with the deed at the county clerk and recorder's office.

03:11:04 Sen. Hamlett asked if there is a time limit for filing the deed. Mr. Haralson said there is not.

Discussion of Certain Constitutional Issues Regarding Jurisdiction over Water Rights

03:11:48 Helen Thigpen, staff attorney, Legislative Services Division, presented her analysis regarding jurisdiction of the Water Court, and if an unelected chief water judge and associate water judge presents any constitutional issues. ([Exhibit 6](#))

Committee Questions and Discussion:

03:27:24 Rep. Williams asked Ms. Thigpen if the legislature's authority to create other courts is reflected in statute.

03:29:46 Rep. Williams said the WPIC may need to look at legislation so that what we have now is reflected in statute.

Consideration of Water Distribution Issues Identified by Adjudication Advisory Committee

03:30:46 Russ McElyea, chief water judge, Montana Water Court, presented information on the enforceability of decrees. ([Exhibit 7](#))

03:37:29 Mr. McElyea discussed the "15 percent problem" of a water right affected by the decree.

- 03:39:08 Holly Brown, District Court judge, 18th Judicial District, presented information on the relationship between the district court and the Water Court.
- 03:43:32 Ms. Brown discussed water distribution issues identified by the Water Adjudication Advisory Committee.
- 03:53:59 George Alberda, water commissioner, Gallatin River, Hyalite Creek, and Cottonwood Creek, and dam tender, Hyalite Reservoir, said that water users and water right holders should have some input on selecting water commissioners. He discussed his experience working with the district court and the Water Court.

Draft Findings

- 03:58:52 Jason Mohr, research analyst, Legislative Services Division, presented the draft findings for the future of the Water Court study. **(Exhibit 8)** He said the intent of the findings is to help the WPIC come to some recommendations for the next course of action.
- 04:04:56 Mr. Mohr discussed the list of suggestions. **(Exhibit 9)**

Public Comment:

- 04:05:51 Susan Duncan, irrigator, Gallatin River system, discussed working with the water commissioner.
- 04:11:11 Rep. Kerry White, HD 64, discussed local control.
- 04:13:03 Mick Seeburg, senior water right holder and irrigator, discussed local control.
- 04:14:15 Joe Gutkoski, president, Montana Rivers Action, discussed water rights legislation and local control.
- 04:21:35 Mike Cusick, water rights attorney, Bozeman, discussed jurisdiction over water rights.

Committee Questions and Discussion:

- 04:24:37 Rep. Williams asked Ms. Brown about public perception of water court judges and what encouraged her to specialize in water.
- 04:30:31 Rep. Williams asked Ms. Brown about any water disputes she would need to recuse herself from.
- 04:33:34 Rep. Williams asked Ms. Brown about her interpretation of the "15 percent" of a water right affected by the decree.
- 04:35:49 Sen. Vincent asked Mr. Alberda about arrest authority for water commissioners.
- 04:37:29 Rep. Z. Brown asked Ms. Brown about the advantage of standardizing data collection methodology.
- 04:40:12 Rep. Z. Brown asked Ms. Brown about standardized record-keeping for all water commissioners.
- 04:42:42 Rep. Z. Brown asked Mr. Alberda about his record-keeping practices.
- 04:44:33 Rep. B. Brown asked Mr. Alberda about a split in a water right between fisheries and irrigators.
- 04:45:57 Sen. Hamlett asked if the WPIC wanted to take any action.
- 04:46:14 Rep. Williams thanked Mr. Mohr for putting together the findings enabling the WPIC to begin its work.
- 04:46:55 Sen. Vincent asked Mr. Mohr about timing for draft legislation.

04:48:03 Sen. Vincent said committee members can start to provide some recommendations for findings so staff can begin work before the meeting in July.
04:48:38 Sen. Hamlett said the public can also provide their ideas to staff.
04:49:00 Rep. Z. Brown thanked Ms. Brown, Jan Bjork, district court administrator, and Mr. Alberda for hosting the WPIC meeting.
04:49:22 Mr. Mohr provided information about the field trip.
04:49:49 Ms. Evans provided information about the three stops on the field trip.
04:51:01 Mr. Mohr provided maps for the field trip.

RECESS

04:51:23 Sen. Hamlett adjourned the meeting at 1:54 p.m.

LEAVE FOR FIELD TRIP

- Four Corners Water and Sewer District, 495 Quail Run Road
- Middle Creek Parklands Subdivision, Huffine Lane at Circle F Trail
- Farmer's Canal

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