



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 3, 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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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 March 7-8, 2016;
- Voted 8-0 to send a letter to the city of Bozeman and the U.S. Forest Service, with a copy to the Department of Natural Resources and Conservation (DNRC), supporting the Bozeman Municipal Watershed Project;
- Voted 7-1 to draft legislation to change language in statute to allow "the holders of at least 15% of the water rights on the source or 15% of the cumulative flow contained in the water rights on the source" to petition a district court;
- Voted 7-0 to draft legislation requiring DNRC training for newly appointed water commissioners;
- Voted 7-0 to draft legislation that changing technology is not subject to the water right change process;
- Voted 8-0 to draft legislation that would allow for an adversely affected party to waive that adverse effect in a water right permit or change application;
- Voted 8-0 to draft legislation to allow for an appellant of a DNRC decision to request a water master be assigned to a district court;
- Voted 8-0 to allow an appellant of a DNRC decision to have a choice of venue between the District Court and the Water Court;
- Voted 6-2 to draft legislation to put a provision for exempt wells in SB 19 (2013) into statute.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Hamlett called the meeting to order at 9:11 a.m. The secretary noted the roll. [\(Attachment 3\)](#) Sen. Fielder was excused and left her proxy with Rep. B. Brown. [\(Attachment 4\)](#)

Approval of minutes from March 2016

00:00:29 **Motion/Vote:** Rep. Glimm moved to approve the minutes log from March 7-8, 2016. The motion carried unanimously by voice vote of those present and voting.

00:00:44 Sen. Hamlett said the committee will hear testimony from Shelly Vance regarding the clerk and recorders offices and the water rights transfers.

00:01:24 Ms. Vance presented historical background information and gave her perspective from working in the Gallatin County Clerk and Recorder's office and from serving as the county clerk and recorder for 18 years.

Committee Questions and Discussion: None

UPDATE ON YELLOWSTONE CLUB EFFLUENT SPILL

00:10:51 Christian Schmidt, administrator, Planning, Prevention, and Assistance Division, Department of Environmental Quality (DEQ), provided an update on the wastewater spill that occurred from a storage pond at the Yellowstone Club on March 3. [\(Exhibit 1\)](#)

Public Comment:

00:20:04 Tony Kolnik provided documents regarding the history of the Yellowstone Club effluent pond. [\(Exhibit 2\)](#)

00:25:36 Mr. Kolnik presented a demonstration to help explain what may have taken place at the spill.

00:37:15 Susan Duncan, education and outreach, Association of Gallatin Agricultural Irrigators (AGAI) and Greater Gallatin Watershed Council, discussed the Yellowstone Club wastewater spill and pharmaceuticals present in downstream water.

00:40:22 Rep. Kerry White, HD 64, said that he and other legislators sent a letter to the DEQ requesting a public meeting regarding the spill, but were unable to schedule a meeting.

Committee Questions and Discussion:

00:47:17 Sen. Stewart Peregoy asked Rep. White when the wastewater treatment plant in Big Sky was built. Rep. White said that Big Sky was created in the 1970s and that each part of the development was approved separately.

00:49:23 Sen. Stewart Peregoy asked Rep. White about the need for a study to look at the impacts of development in Big Sky on the Upper Gallatin River. Rep. White said that as technology advances new systems are being used that protect groundwater and the environment.

00:53:44 Sen. Stewart Peregoy asked Mr. Schmidt about any recent studies done on water quality in the Upper Gallatin River prior to the wastewater spill. Mr. Schmidt said that total maximum daily load (TMDL) work was done in 2010 on the West Fork of the Gallatin River that included a nutrient and sediment assessment.

00:54:41 Sen. Stewart Peregoy asked Mr. Schmidt about the update DEQ will give in July.

0:55:08 Sen. Vincent asked Mr. Schmidt about the standards used to treat the water in the storage pond and about the DEQ review process when issuing permits.

00:59:40 Sen. Vincent commented on the sewage treatment system used by the Yellowstone Club.

01:01:14 Sen. Vincent asked Mr. Schmidt if nitrate levels were exceeded in the affected tributaries. Mr. Schmidt said they were not.

01:02:22 Rep. Glimm asked Mr. Kolnik if groundwater was being used to fill the effluent pond. Mr. Kolnik said it was not.

01:09:37 Rep. Glimm asked Mr. Schmidt about what has been done to fix the problem so that damage from ice does not happen again.

01:13:42 Rep. Glimm asked Mr. Schmidt about the high sediment levels in the subsequent drainages from the spill and how that compares to normal spring runoff. Mr. Schmidt said a comparison hasn't been done.

01:15:11 Rep. Glimm said the DEQ should have provided a higher level of customer service and met with the public about the spill. Mr. Schmidt said that when the request was made for a public meeting the DEQ asked for additional time to collect data.

01:17:33 Rep. Glimm asked Mr. Schmidt if community meetings were held later. Mr. Schmidt said that the DEQ did reach out, but never set a meeting date.

01:18:02 Rep. Z. Brown commented on having a community meeting.

01:18:31 Rep. Z. Brown asked Mr. Schmidt about the inspection process before the spill and how that has changed since the spill.

01:21:25 Rep. Z. Brown asked Tammy Swinney, director, Gallatin Local Water Quality District, about any water quality concerns related to the spill or development practices in Big Sky. Ms. Swinney said that the biggest concern is the proliferation of septic systems.

01:24:02 Rep. Z. Brown asked Ms. Swinney about water quality concerns in using effluent water on the golf course at the Yellowstone Club.

01:25:46 Rep. B. Brown asked Rep. White if there is still a need to have a public meeting with the DEQ. Rep. White said there is.

01:27:13 Rep. B. Brown asked Mr. Schmidt if the DEQ is willing to having a public meeting. Mr. Schmidt said yes.

01:27:58 Rep. Williams asked Mr. Schmidt about scheduling a public meeting when the DEQ releases its final report.

01:29:04 Rep. Williams asked Mr. Schmidt about the need for an expansion in wastewater treatment at Big Sky or the Yellowstone Club that would provide the mechanism for a Montana Environmental Policy Act (MEPA) evaluation. Mr. Schmidt said he did not know what the trigger would be.

01:30:42 Rep. Williams asked Mr. Schmidt about the information DEQ has learned as a result of the spill. Mr. Schmidt said that the process has changed since the facility at Big Sky was approved.

01:31:43 Rep. B. Brown asked Mr. Schmidt if the DEQ is looking at other ponds within the state that have been built using similar construction in order to avoid another spill. Mr. Schmidt said the department has put together a group to identify and track facilities that have a similar risk.

01:32:58 Sen. Hamlett asked Mr. Schmidt about DEQ's policy on accepting documents submitted by the public.

01:33:56 Sen. Hamlett asked Mr. Schmidt about the importance in receiving reports from the district court and if something can be done legislatively to fix the problem.

01:35:06 Sen. Hamlett asked Mr. Schmidt about different guidelines for incorporated and unincorporated communities.

01:36:49 Sen. Hamlett asked Mr. Schmidt about the review process for plans submitted for wastewater treatment facilities.

01:37:32 Sen. Hamlett asked Mr. Schmidt about plans approved by DEQ for an incorporated community and if an onsite inspection is done during construction or after the work has been completed. Mr. Schmidt said that it is tied to the funding mechanism.

01:38:23 Sen. Hamlett asked Mr. Schmidt about a future engineering requirement to completely drain the system. Mr. Schmidt said the department now requires a valve shut-off.

- 01:39:35 Sen. Hamlett asked about the shut-off valves at the Yellowstone Club storage pond.
- 01:39:57 Sen. Hamlett asked Mr. Schmidt about treated water and if the water at the Yellowstone Club was mechanically treated and in a settling pond. Mr. Schmidt said it is a mechanical treatment plant, not a lagoon system.
- 01:40:54 Sen. Hamlett asked if the water was disinfected. Mr. Schmidt said it was.
- 01:41:05 Sen. Hamlett asked Mr. Schmidt about the land eroded by the spill and who it belonged to. Mr. Schmidt said it was owned by Yellowstone Mountain Club.
- 01:41:31 Sen. Hamlett asked Helen Thigpen, staff attorney, Legislative Services Division, to find out about the procedure when an agency receives documents from the public.
- 01:42:18 Rep. Z. Brown said he agrees it is important that the community receive updates and have an opportunity to voice their concerns. He said since the Yellowstone Club and Big Sky rely on the health of the Gallatin River there are incentives in place, but because of poor development practices, septic tanks are a major issue. He said this is an opportunity for the public to look at what is happening upstream and to help hold state agencies and neighbors in Gallatin County accountable for positive development practices that protect shared resources, irrigators, and the taxpayers.
- 01:44:54 Sen. Hamlett said when a catastrophic event happens it is in the best interest of the public to hold a meeting to alleviate fear or perception.
- 01:45:50 Mr. Schmidt said that the DEQ did hold five public meetings in Big Sky during the course of the incident.
- 01:46:29 Sen. Hamlett said a larger community was affected downstream in the Gallatin Valley that also wanted information.

WATER-RELATED RESEARCH (85-2-105, MCA): BIOFILM ENGINEERING AND WASTEWATER TREATMENT DESIGN OPERATION

- 01:47:42 Ellen Lauchnor, Department of Civil Engineering, Montana State University, gave a PowerPoint presentation providing information on research related to emerging contaminants in wastewater in biological treatment. [\(Exhibit 3\)](#)

Public Comment:

- 02:03:25 Joe Gotkowski, president, Montana Rivers, commented on hazards to human health from solvents in the water system.

Committee Questions and Discussion:

- 02:12:33 Sen. Stewart Perego requested copies of Ms. Lauchnor's PowerPoint presentation.
- 02:13:08 Sen. Hamlett asked about the need for continued research in order to determine what bacteria works best to treat wastewater as more contaminants are going into the water supply.
- 02:14:55 Sen. Hamlett asked Ms. Lauchnor if the reverse osmosis system is effective in removing pharmaceuticals. Ms. Lauchnor said it does have potential.
- 02:15:19 Rep. Glimm asked Ms. Lauchnor about regulations on pharmaceuticals.
- 02:17:23 Rep. Williams said the DEQ is beginning its triennial review of water quality standards and it may be an opportunity for the WPIC to get an update at a future meeting.

02:18:50 Mr. Schmidt, DEQ, said there is concern about pharmaceuticals in the water supply and that the Environmental Protection Agency (EPA) is looking to push new pharmaceutical standards in the next 8-12 months.

02:20:34 Rep. Williams asked Mr. Schmidt if the EPA's time-line will coordinate with the DEQ triennial review. Mr. Schmidt said he did not know.

02:21:03 Sen. Hamlett thanked Mr. Gotkowski for sharing his story and said the effect on human health is one of the reasons to look at pharmaceuticals in the water supply. He said communities need to inform the public about how to safely dispose of unused pharmaceuticals.

02:21:52 Mr. Schmidt said the EPA has proposed a new rule for hospitals and primary care facilities to treat pharmaceuticals as a solid waste and how to dispose of them properly.

02:22:21 Sen. Hamlett said prescription drug abuse is another reason to dispose of painkillers and other drugs properly.

02:22:59 Rep. Denise Hayman, HD 66, said that unused pharmaceuticals can be dropped off at the Law and Justice Center in Bozeman.

02:23:34 Sen. Hamlett asked about any alternative places for dropping off unused pharmaceuticals.

SJ2 STUDY: STATE ASSUMPTION OF FEDERAL SECTION 404 PERMITTING PROGRAM

02:23:55 Mr. Schmidt, DEQ, presented information on the transition time and cost for state assumption of the federal Section 404 permitting program.

02:31:38 Jason Mohr, research analyst, Legislative Services Division, discussed the draft findings and background information on state assumption. [\(Exhibit 4\)](#)

02:32:30 Mr. Mohr discussed finding 1.

02:33:09 Mr. Mohr discussed finding 2.

02:33:40 Mr. Mohr discussed finding 3.

02:34:06 Mr. Mohr said different agencies are responsible for permits in Montana and provided a copy of *A Guide to Stream Permitting in Montana*. [\(Exhibit 5\)](#)

02:34:54 Mr. Mohr discussed finding 4.

02:35:24 Mr. Mohr discussed finding 5.

02:36:12 Mr. Mohr discussed finding 6.

02:36:57 Mr. Mohr discussed finding 7.

02:37:33 Mr. Mohr discussed finding 8.

02:38:32 Mr. Mohr discussed finding 9.

02:39:32 Mr. Mohr discussed finding 10.

02:40:07 Mr. Mohr discussed finding 11.

Public Comment:

02:40:45 Jim Beck, Water Resources Committee, Montana Association of Conservation Districts (MACD), commented on keeping local control of 404 permitting. He said that Jeff Ryan, MACD, left a copy of his comments regarding 404 permits and is available by phone if there are questions by the committee.

Committee Questions and Discussion:

02:42:36 Sen. Hamlett asked if any committee members wanted to hear testimony from Mr. Ryan. Mr. Mohr provided a copy of Mr. Ryan's written comments. [\(Exhibit 6\)](#)

Sen. Hamlett asked if Mr. Ryan is available to come to the next WPIC meeting. Mr. Beck said he is.

02:43:40 Rep. Williams asked Mr. Beck about MACD's position supporting state assumption.

02:46:35 Rep. Williams asked Mr. Beck about the 310 permits done by the conservation districts and if they apply to stream bank alterations and not non-riparian wetlands. She asked if conservation districts are interested in extending their involvement beyond waterways. Mr. Beck said the 310 permits apply to stream banks and that each conservation district has to determine its ability to become more involved.

02:48:12 Rep. Williams said she looks forward to reading Mr. Ryan's report.

02:48:30 Sen. Vincent said with expanded jurisdiction, under the EPA's Clean Water Rule, there will be more nationwide permits and that many of the 310 permits, issued by conservation districts will have a nexus with 404 permits. He said if the state assumes the 404 program it can work with conservation districts to do nationwide permits locally. He said he looks forward to hearing Mr. Ryan's perspective.

02:50:54 Sen. Vincent said on certain major projects the DEQ does not want to work as a cooperating agency with the U. S. Army Corps of Engineers because of how long it takes the Corps to process permits. He asked Mr. Schmidt about it. Mr. Schmidt said that is one of the reasons states are interested in assuming the 404 permitting process.

02:58:56 Rep. Williams asked Mr. Schmidt about a significant step the state could take that would not commit it to the entire process. Mr. Schmidt said it would be how to fund the program.

03:01:19 Rep. Z. Brown asked Mr. Beck if MACD had any discussions about funding and whether it would support additional general fund appropriations or fees for state assumption. Mr. Beck said he did not know if there have been any discussions about specific funding sources.

03:02:41 Rep. Z. Brown said that the next step should be a discussion on how to fund the program and the impact to Montana taxpayers.

03:03:24 Sen. Hamlett asked Mr. Schmidt if Montana would be better able to make state based decisions rather than a federal agency.

03:06:08 Sen. Hamlett said that Montana has worked well on the endangered species program and knows what goes on in the state and is a reason why state assumption is being considered.

Committee Action:

03:07:45 Sen. Hamlett opened discussion on committee action.

03:07:51 Sen. Vincent asked about application deadlines for available grants.

03:10:38 Mr. Mohr said the next round of federal program development grants will be available in the spring of 2018.

03:11:59 Sen. Vincent said he recommends finding a state special revenue account in order to help pay for the DEQ to explore state assumption.

- 03:12:24 Rep. Williams said the role of the conservation districts is critical and a next step could be to look at the 310 permitting process and how much of the 404 process it would take in if it continued as it is now.
- 03:14:17 Sen. Vincent said that some of the information may be subjective.
- 03:15:47 Rep. Williams recommended lining out the authority aspects of the permits.
- 03:17:21 Mr. Mohr said that at the meeting in January the EPA said that a conservation district cannot issue 404 permits.
- 03:17:43 Rep. Williams said it might be helpful for the WPIC to include in its report the extent of 310 authorities within the 404 objectives of authorities.
- 03:18:17 Rep. Z. Brown said staff could move forward and look at scope of jurisdiction using the worst-case scenario. Sen. Vincent said the problem is how they are defining what is adjacent and the "bed-and-banks" portion of the rule.
- 03:22:08 Rep. Williams asked about calling Mr. Ryan so he can be included in the discussion now or waiting to have the discussion until he is able to attend the next WPIC meeting. Sen. Hamlett said Mr. Ryan can attend the next meeting and asked for the committee to decide.
- 03:23:02 Sen. Vincent said he thought it was more important to find a source of funding so the DEQ can continue to investigate state assumption.
- 03:24:06 Rep. Williams said there is concern that if the rule is narrowed and states don't have their own stream and wetland protection laws, they could lose their discharge permitting authority. She said she checked with legal counsel at DEQ and Montana does have sufficient stream protection mandates. She said she recommends waiting to talk to Mr. Ryan until John North, chief legal counsel, DEQ, and representatives from MACD are present.
- 03:26:46 Sen. Hamlett said committee members can invite anyone they think the WPIC may benefit hearing from. He explained why he carried the study legislation.

Sen. Hamlett left the meeting and Rep. Glimm took over responsibilities of the chair.

ADJUDICATION UPDATE

- 03:28:42 Tim Davis, administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC), said the adjudication status map is now indicating progress on the reexamination of Flint Creek Basin. He said the DNRC is verifying claims in Rock Creek, Musselshell, and other basins. **(Exhibit 7)**
- 03:29:46 Russ McElyea, chief water judge, Montana Water Court, said the Water Court is ahead of schedule in getting temporary preliminary and preliminary decrees out by 2020. He said they have completed all of the basins except for two in the Flathead, where there is a temporary stay until January 2017 pending Congressional approval of the Confederated Salish and Kootenai Tribe (CSKT) Compact. **(Exhibit 8)**
- 03:30:30 Mr. McElyea corrected the information that was submitted and said he signed a final order on the Fort Keogh Research Station Compact.

Public Comment: None

Committee Questions and Discussion:

- 03:31:20 Sen. Vincent commended the Water Court for being ahead of schedule.

THE WATER RIGHT CHANGE PROCESS AND THE HOHENLOHE DECISION

03:31:57 Abigail St. Lawrence, water rights attorney, presented the major findings in *Hohenlohe v. DNRC*. [\(Exhibit 9\)](#)

Sen. Hamlett returned to the meeting and resumed the role as chair.

03:33:38 Ms. St. Lawrence discussed the application timeline for change applications and for new beneficial use permits.

03:37:19 Ms. St. Lawrence discussed the Irrigation Water Requirement (IWR).

03:40:50 Ms. St. Lawrence discussed the Hohenlohe decision. [\(Exhibit 10\)](#)

03:48:59 Mr. Davis, DNRC, responded to the memo from Ms. St. Lawrence. [\(Exhibit 11\)](#)

03:49:41 Mr. Davis discussed the application processing timeline.

03:54:00 Mr. Davis said the DNRC agrees with the Hohenlohe decision.

03:54:22 Mr. Davis discussed the IWR.

03:55:29 Mr. Davis discussed return flows.

Public Comment:

03:56:35 Sen. Hamlett said he asked Jim Petersen to come to the meeting, but he was unable to attend in person and is testifying via phone.

03:56:55 Sen. Jim Petersen, former legislator, Buffalo, via phone, discussed the regulatory environment related to water rights. He said that agricultural producers would rather maintain the status quo than go through the change process because it is onerous and all the responsibility falls to the producer.

04:02:08 Patrick Verlanic, rancher, irrigator, and water right holder on Flint Creek, Granite County, commented on his experience working with the DNRC.

04:07:59 Mr. McElyea responded to comments made by Ms. St. Lawrence and Mr. Davis with respect to the adjudication and the change process.

04:23:18 Jay Weiner, assistant attorney general, Attorney General's office and member of the Water Adjudication Advisory Committee, discussed his experience with the adjudication process.

Committee Questions and Discussion:

04:30:34 Rep. Z. Brown asked Mr. Weiner about an option to have the attorney general act as an objector in the adjudication process.

04:32:54 Rep. Z. Brown asked Mr. McElyea about opening up the change statutes. Mr. McElyea said that with the time remaining before the next legislative session it would be unrealistic to take a serious look at the change process and the interrelationship with the Water Court.

04:35:52 Sen. Vincent asked Mr. McElyea if decrees could be enforced without all of the issue remarks being settled or if there are lines that could be drawn inside of those issue remarks to allow them to be enforced that wouldn't be detrimental to existing water right holders.

04:39:37 Sen. Vincent asked Mr. McElyea about enforceability of decrees. Mr. McElyea commented on working with the DNRC and the water right change process.

04:44:31 Sen. Vincent asked Mr. Davis about a way to make the change process better for the water right holder, the DNRC, and the Water Court.

04:48:52 Sen. Vincent asked Mr. Davis about making the process work better for the water user and still consider adverse effects.

04:52:05 Sen. Vincent commented on the need to find the threshold for adverse effect.

04:52:27 Sen. Vincent asked Mr. Davis about the 90-day gap after receipt of the deficiency notice.

04:54:15 Sen. Vincent asked Ms. St. Lawrence to respond to the same question.

04:55:23 Rep. Glimm said the DNRC needs to be an advocate for helping people find a beneficial use for their water. Mr. Davis said the DNRC strives to communicate in a respectful and helpful way during the change process and continues to work to improve it.

04:57:45 Rep. Williams asked Mr. Verlanic about the DNRC doing an adverse effect analysis internally rather than the irrigator objecting. Mr. Verlanic said the people within the local drainage know the problems and solutions better than a government agency.

05:01:27 Rep. Williams asked Mr. Verlanic if he would rather have an objector-driven adverse affect analysis. Mr. Verlanic said he would.

05:02:01 Rep. Williams thanked Mr. McElyea for helping to improve the adjudication process and asked about the proportion of the claims that have or have had an active objection. Mr. McElyea said he thought it was about 50%.

05:03:11 Rep. Williams asked Mr. McElyea about the potential for adverse effect downstream.

05:06:42 Rep. Williams said there needs to be a system to protect against adverse effect and asked about adjudicating volume. Mr. McElyea said if legislation was enacted the Water Court could assess the volume for every water right in Montana. He said that defining volume is an important attribute of the water right.

05:10:31 Sen. Hamlett said there seems to be an issue that when someone wants to change from flood irrigation to sprinkler irrigation the DNRC wants to reduce their water right. He asked Mr. Davis about the history of irrigation in Montana and what the basis is for changing a water right based on new technology. Mr. Davis said that the way the DNRC is currently interpreting the statute changing method of irrigation does not have to go through a change authorization.

05:12:38 Sen. Hamlett asked Mr. Davis if the original general description of the land is still valid even though some of the land may not have been irrigated all the time. Mr. Davis said it depends on what was historically irrigated.

05:13:38 Sen. Hamlett asked Mr. Davis if changing rules has been a problem.

05:15:41 Sen. Hamlett asked Ms. St. Lawrence about the Hohenlohe case and if the attorney for the DNRC mentioned trimming water rights and "giving it a hair cut." Ms. St. Lawrence said she did not know and commented on the case.

05:19:04 Sen. Hamlett asked Ms. St. Lawrence about members of the audience during the case.

05:19:17 Sen. Hamlett said he heard the counsel for DNRC describe the water rights and that they were going to "give it a little hair cut."

05:19:58 Sen. Hamlett said that any water rights adjudication will be tested by other states. Mr. McElyea said it is best to define water rights as accurately as possible.

05:21:29 Sen. Hamlett asked Mr. Davis if there could be a legislative solution for when a change is made from flood to sprinkler so it doesn't diminish the water right. Mr. Davis said there could be.

- 05:22:50 Sen. Hamlett asked Mr. Davis about public perception that their water right will be reduced during the change process and that it will open up more water in a closed basin that other people can apply for.
- 05:24:40 Sen. Hamlett said he appreciates DNRC's involvement at the WPIC meetings.
- 05:25:08 Sen. Vincent asked Mr. Davis about changing method of irrigation.
- 05:26:09 Sen. Vincent asked Mr. Davis about changes made to the method of irrigation when it includes adding additional acres and if that will result in getting less water based on historical use. Mr. Davis said the department looks at historic use to see if there is an adverse effect.
- 05:29:32 Sen. Hamlett asked Mr. Davis about someone who switches from flood irrigation to pivot irrigation and are able to increase the number of acres being irrigated. Mr. Davis said if they are within their historic place of use and are only changing the method of irrigation it would be allowed.
- 05:30:30 Rep. Glimm asked Mr. Davis about the Hohenlohe case and if they could have continued to switch from flood to sprinkler irrigation and back without getting a change of use permit. Mr. Davis said they could not have because by adding instream flow they were adding a purpose to their water right.

2016 WATER RESOURCES EVALUATION: WATER USE IN CLOSED BASINS

- 05:33:39 Abigail St. Lawrence, representing the Montana Association of Realtors, highlighted key findings in the report, *Water Resources Evaluation of Water Use in Closed Basins*. ([Exhibit 12](#)) She said the report looked at water use in four closed basins with a lot of development and the conversion from irrigated ground to domestic residential development.

Public Comment: None

Committee Questions and Discussion:

- 05:48:54 Rep. Glimm asked Ms. St. Lawrence about the exempt wells before Judge Sherlock's ruling. Ms. St. Lawrence said the wells in the study are now considered a combined appropriation.
- 05:50:19 Rep. Z. Brown asked Ms. St. Lawrence about the realtor's position on community water systems as an alternative to exempt wells.

VEGETATIVE MANAGEMENT IN BOZEMAN MUNICIPAL WATERSHED

- 05:52:29 Lisa Stoeffler, Bozeman District ranger, Gallatin National Forest, U.S. Forest Service (USFS), presented information on the Bozeman Municipal Watershed Project to reduce the risk of severe and extensive wildfire on National Forest System lands within the municipal watersheds.
- 05:57:48 Craig Woolard, director, Public Works Department, city of Bozeman, discussed the importance of its partnership with the USFS and the quality of the water the community receives from the watershed.

Public Comment:

- 05:58:44 Kerry Davant, chief of staff, Department of Natural Resources and Conservation (DNRC), said she is available to answer any questions regarding the DNRC's perspective on the project.

05:59:05 Rep. Kerry White, HD 64, requested that the WPIC send a letter supporting the project.

Committee Questions and Discussion:

- 06:02:07 Sen. Vincent asked Ms. Stoeffler about the project acreage. Ms. Stoeffler said the USFS portion is just under 5,000 acres and that the city of Bozeman has not yet defined its project area.
- 06:02:47 Sen. Vincent asked Ms. Stoeffler about litigation. Ms. Stoeffler said the litigants are the Alliance for the Wild Rockies and Native Ecosystems Council over lynx habitat, grizzly bear habitat, and some water quality issues.
- 06:03:56 Sen. Vincent said the same type of argument is being made on a project in northwest Montana and asked if the litigants are asking for an expanded scope. Ms. Stoeffler said it is based on disagreement with the biological opinion issued by the U.S. Fish and Wildlife Service for grizzly bear and with the methodology used for some of the conclusions.
- 06:05:44 Rep. Williams asked Ms. Stoeffler if after the Ninth District Court case is resolved whether the project will still be delayed by the Supreme Court case.
- 06:06:53 Rep. Williams asked Ms. Stoeffler about implementation timelines. Ms. Stoeffler said the project will take years to implement and there are not timing restrictions except for wet roadways. She also said that they do not want to work in both drainages at the same time.
- 06:08:19 Rep. Glimm asked Mr. Woolard if the city is being sued to stop its project. Mr. Woolard said he did not think so. Rep. Glimm asked Mr. Woolard if the Equal Access to Justice Act had any bearing. Mr. Woolard said he did not know.
- 06:09:18 Sen. Hamlett asked Ms. Davant about the number of acres that the DNRC is doing vegetative management on. Ms. Davant said she will find out.
- 06:09:49 Rep. Williams asked Ms. Davant about a public meeting regarding the Triple Tree Ranch neighborhood and that she would be willing to help with planning.
- 06:10:32 Sen. Vincent discussed legislation passed regarding involvement by the Attorney General's office.

DISCUSSION OF DRAFT LEGISLATION

- 06:11:58 Sen. Hamlett opened discussion on draft legislation.
- 06:12:28 Rep. Williams said staff made copies of the matrix she put together on the future of the Water Court study. [\(Exhibit 13\)](#)
- 06:13:03 Sen. Hamlett asked the committee about draft legislation now or waiting until the next WPIC meeting.
- 06:13:23 Rep. Z. Brown said he recommended working on draft legislation now in order to get public comment.
- 06:14:11 Sen. Vincent said he also recommended working on draft legislation now.

AGENCY ADMINISTRATIVE RULE UPDATE

- 06:15:11 Helen Thigpen, staff attorney, Legislative Services Division, presented information on the stream depletion zone proposed on Rye Creek.

PUBLIC COMMENT ON ANY ISSUE WITHIN THE JURISDICTION OF THE WPIC

None

DISCUSSION OF DRAFT LEGISLATION

Discussion regarding sending a letter of support for the Bozeman Municipal Watershed Project:

06:16:28 Rep. B. Brown
06:17:13 Sen. Vincent
06:18:02 Rep. B. Brown
06:18:40 Sen. Vincent
06:19:05 Sen. Hamlett
06:19:35 Ms. Thigpen
06:19:42 Sen. Hamlett
06:19:54 Ms. Thigpen
06:20:26 Sen. Hamlett
06:20:32 Ms. Thigpen
06:20:40 Sen. Hamlett

06:20:48 **Motion:** Rep. B. Brown moved that the WPIC send a letter to the city of Bozeman, the Department of Natural Resources and Conservation (DNRC), and the U.S. Forest Service (USFS) supporting the Bozeman Municipal Watershed Project.

Discussion:

06:21:04 Rep. Z. Brown
06:21:44 Sen. Hamlett
06:21:59 Rep. Z. Brown
06:22:13 Rep. Williams
06:22:41 Rep. Z. Brown
06:22:55 Rep. B. Brown
06:23:51 Rep. Williams
06:24:14 Sen. Vincent
06:25:10 Rep. Z. Brown
06:25:58 Sen. Hamlett
06:26:16 Mr. Mohr restated the motion.
06:26:44 Rep. B. Brown
06:27:42 Without objection, Rep. Williams requested that the letter be sent to the city of Bozeman and the USFS with a copy sent to the DNRC.
06:28:35 Rep. B. Brown

06:28:42 **Vote:** The motion carried unanimously by voice vote. Sen. Fielder voted aye by proxy.

06:29:04 Sen. Hamlett
06:29:24 Rep. B. Brown

Discussion on SJ 2:

06:29:46 Sen. Vincent
06:30:24 Rep. Williams
06:31:44 Sen. Hamlett

06:32:35 Rep. Williams
06:33:09 Sen. Hamlett

Discussion on the Future of the Water Court:

06:33:37 Sen. Hamlett

06:33:54 **Motion:** Rep. Z. Brown moved to draft legislation to define "15 percent of the water right" as "15 percent of the petitioned members of the canal."

Discussion:

06:34:58 Rep. Williams
06:35:06 Ms. Thigpen
06:35:43 Rep. Williams
06:35:46 Ms. Thigpen
06:36:03 Rep. Williams
06:36:21 Ms. Thigpen
06:36:37 Rep. Williams
06:36:40 Ms. Thigpen
06:36:53 Rep. Z. Brown
06:37:16 Sen. Hamlett
06:37:49 Rep. Glimm
06:38:21 Rep. Z. Brown
06:38:34 Rep. Glimm
06:39:12 Sen. Hamlett
06:39:49 Sen. Vincent

06:41:02 **Motion:** Rep. Z. Brown amended his motion to define "15 percent" as "15 percent of the water rights."

Discussion:

06:41:29 Sen. Stewart Peregoy
06:41:48 Rep. Z. Brown
06:42:06 Rep. Williams
06:42:43 Sen. Vincent
06:43:09 Mr. Mohr clarified the motion.
06:44:45 Sen. Stewart Peregoy
06:45:30 Rep. Z. Brown
06:45:56 Sen. Stewart Peregoy
06:46:38 Rep. Williams
06:47:06 Rep. Glimm
06:47:24 Rep. Williams
06:47:32 Rep. Glimm
06:47:39 Rep. Williams
06:47:47 Sen. Vincent
06:48:40 Rep. Williams
06:48:45 Sen. Vincent
06:49:13 Mr. Mohr
06:49:43 Sen. Vincent

06:49:52 Rep. Williams
06:50:02 Rep. B. Brown
06:50:27 Rep. Z. Brown withdrew his motion.
06:50:46 Sen. Hamlett
06:51:32 Rep. B. Brown
06:51:56 Mr. McElyea
06:52:04 Sen. Hamlett
06:52:26 Mr. McElyea
06:55:02 Sen. Hamlett

06:56:35 **Motion/Vote:** Rep. Williams moved that language in statute be changed to "the holders of at least 15 percent of the water rights on the source or 15 percent of the cumulative flow contained in the water rights on the source" and give staff the ability to change wording. The vote on the motion was 5-3 by voice vote with Sen. Stewart Peregoy, Rep. B. Brown, and Sen. Fielder voting no. Sen. Fielder voted nay by proxy.

Discussion:

06:58:32 Rep. B. Brown
06:59:06 Sen. Hamlett
06:59:45 Rep. Williams
07:00:30 Ms. Thigpen
07:01:22 Sen. Hamlett

07:01:56 Without objection, Rep. B. Brown changed his vote and Sen. Fielder's proxy vote to aye.

07:02:21 Rep. Williams
07:02:36 Sen. Vincent
07:03:11 Sen. Stewart Peregoy

Committee Discussion on the Matrix Provided by Rep. Williams

07:03:38 Sen. Hamlett
07:03:51 Rep. Williams
07:04:23 Mr. Mohr
07:04:35 Rep. Williams

Discussion on Water Commissioners:

07:05:30 Sen. Vincent
07:06:39 Rep. Z. Brown

07:06:58 **Motion:** Rep. Z. Brown moved to draft legislation clarifying that DNRC training is required for newly appointed water commissioners.

Discussion:

07:07:26 Rep. Williams
07:07:56 Rep. Glimm
07:08:42 Rep. Z. Brown

07:09:12 Sen. Vincent
07:09:54 Mr. Mohr restated the motion.

07:10:28 **Vote:** The motion carried unanimously by voice vote of those present and voting.

Discussion on the DNRC change process:

07:10:39 Sen. Hamlett
07:12:10 Rep. Williams
07:12:32 Sen. Hamlett

07:13:03 **Motion:** Sen. Vincent moved that changing a technology from a water right is not subject to the change of process.

Discussion:

07:13:20 Sen. Hamlett

07:13:33 **Vote:** The motion carried unanimously by voice vote of those present and voting.

Discussion:

07:13:49 Sen. Vincent
07:15:06 Rep. Williams
07:15:15 Sen. Hamlett
07:15:33 Sen. Vincent
07:15:52 Rep. Williams
07:16:01 Sen. Vincent
07:16:10 Rep. Williams
07:16:14 Sen. Vincent
07:16:21 Rep. Williams
07:16:31 Sen. Vincent
07:16:41 Rep. Williams
07:17:23 Sen. Vincent
07:18:15 Rep. Williams
07:18:29 Rep. B. Brown
07:19:00 Rep. Z. Brown

07:19:31 **Motion:** Sen. Vincent moved to draft legislation that would allow for a party adversely affected in a change application to waive that adverse affect to the DNRC.

Discussion:

07:20:01 Sen. Vincent
07:20:53 Sen. Stewart Peregoy
07:22:23 Sen. Vincent
07:23:07 Sen. Hamlett
07:23:29 Sen. Vincent
07:23:49 Sen. Hamlett
07:24:08 Sen. Vincent
07:24:14 Rep. Glimm

07:25:37 Rep. Williams

07:26:04 **Vote:** The motion carried unanimously by voice vote. Sen. Fielder voted aye by proxy.

Discussion on the Future of the Water Court:

07:26:19 Sen. Hamlett

07:27:22 Sen. Vincent

07:30:01 **Motion:** Sen. Vincent moved to draft legislation that would allow for an appellant of a DNRC decision to be able to request a water master be assigned to the district court that they are filing in.

Discussion:

07:30:34 Rep. Z. Brown

07:30:47 Rep. Williams

07:31:44 Sen. Hamlett

07:32:26 Sen. Vincent

07:33:08 Sen. Stewart Peregoy

07:35:26 Sen. Hamlett

07:36:14 Sen. Vincent

07:36:45 Mr. Mohr restated the motion.

07:37:07 Sen. Vincent

07:37:21 Mr. Mohr

07:37:46 Sen. Vincent

07:39:49 Sen. Hamlett

07:39:58 Sen. Vincent

07:40:27 Sen. Hamlett

07:40:59 Sen. Vincent

07:41:50 Mr. McElyea

07:43:46 Sen. Vincent

07:44:32 Mr. McElyea

07:48:31 Rep. Williams

07:49:14 Mr. McElyea

07:49:18 Rep. Williams

07:51:53 Sen. Vincent

07:52:08 Rep. Williams

07:52:24 Mr. McElyea

07:55:14 Rep. Williams

07:55:29 Sen. Vincent restated the motion.

07:56:03 **Vote:** The motion carried unanimously by voice vote. Sen. Fielder voted aye by proxy.

07:56:20 **Motion:** Sen. Vincent moved to allow for an appellant of a DNRC decision be able to have a choice of venue between the District Court and the Water Court.

Discussion:

07:56:41 Rep. Williams
07:57:09 Ms. Thigpen
07:57:40 Rep. Williams
07:57:45 Sen. Hamlett
07:58:08 Rep. B. Brown
07:58:28 Ms. Thigpen
07:58:47 Rep. B. Brown
07:59:04 Sen. Vincent
07:59:18 Rep. B. Brown
07:59:28 Sen. Vincent
08:00:02 Sen. Hamlett

08:00:06 **Vote:** The motion carried unanimously by voice vote. Sen. Fielder voted aye by proxy.

Discussion on Data Collection and Reporting Requirements for Water Commissioners:

08:00:22 Rep. Z. Brown
08:02:40 Sen. Hamlett
08:03:02 Rep. Z. Brown
08:03:21 Sen. Vincent
08:04:23 Rep. Glimm
08:04:57 Sen. Hamlett
08:05:09 Rep. Z. Brown
08:05:58 Rep. Williams
08:07:19 Mr. Mohr
08:07:56 Rep. Williams

Discussion on SB 19:

08:08:25 **Motion:** Rep. Glimm moved to put a provision for exempt wells in SB 19 (2013) into statute.

Discussion:

08:09:31 Rep. Williams
08:10:57 Sen. Hamlett

08:11:30 **Vote:** The motion carried 6-2 by voice vote. Rep. Williams and Rep. Z. Brown voted no. Sen. Fielder voted aye by proxy.

08:11:56 Rep. Williams asked Ms. Thigpen about liability issues and bonding for water commissioners. Ms. Thigpen said the bond is to ensure that the water commissioner carries out their duties and said she will find out if they are covered under judicial immunity or need to carry general liability insurance.
08:14:01 Rep. Williams said she wants to make sure that water commissioners are protected.

08:14:24 **Motion/Vote:** Rep. B. Brown moved to adjourn the meeting. The motion carried unanimously.

ADJOURN

08:14:40 Sen. Hamlett adjourned the meeting at 5:30 p.m.

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