



## Water Policy Interim Committee

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### 61st Montana Legislature

#### SENATE MEMBERS

DAVID WANZENRIED--Vice Chair  
DEBBY BARRETT  
BRADLEY MAXON HAMLETT  
TERRY MURPHY

#### HOUSE MEMBERS

WALTER MCNUTT--Chair  
RUSSELL BEAN  
BILL MCCHESENEY  
JP POMNICHOWSKI

#### COMMITTEE STAFF

JOE KOLMAN, Research Analyst  
TODD EVERTS, Staff Attorney  
CYNTHIA PETERSON, Secretary

# MINUTES

Approved May 11, 2010

March 11, 2010

Room 102  
State Capitol Building

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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### **COMMITTEE MEMBERS PRESENT**

REP. WALTER MCNUTT, Chair  
SEN. DAVID WANZENRIED, Vice Chair  
SEN. DEBBY BARRETT  
SEN. BRADLEY MAXON HAMLETT  
SEN. TERRY MURPHY  
REP. RUSSELL BEAN  
REP. BILL MCCHESENEY  
REP. JP POMNICHOWSKI

### **STAFF PRESENT**

JOE KOLMAN, Research Analyst  
TODD EVERTS, Staff Attorney  
HELEN THIGPEN, Staff Attorney  
CYNTHIA PETERSON, Secretary

### **Visitors**

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

## **COMMITTEE ACTION**

No committee action taken.

## **CALL TO ORDER AND ROLL CALL**

00:00:01 Rep. Walter McNutt, Chairman of the Water Policy Interim Committee (WPIC) called the meeting to order at 8:00 a.m. The secretary noted roll ([Attachment 3](#)).

## **AGENDA**

### **DRAFT LETTERS TO CONGRESSIONAL DELEGATION**

00:01:52 There were no WPIC comments to the letter regarding the Clean Water Act ([Exhibit 1](#)).

00:02:03 Mr. Kolman commented that he sent the letter regarding levees to Rep. Mehlhoff who stated the letter met the intent and had no comments ([Exhibit 2](#)). There were no further comments from the WPIC.

### **Overview of agenda - Joe Kolman, staff**

### **WATER RIGHT ADJUDICATION/OWNERSHIP UPDATE**

#### **Director Mary Sexton, DNRC**

00:03:05 Mary Sexton, Director, Department of Natural Resources and Conservation (DNRC), reviewed the HB 22 Adjudication Progress Report ([Exhibit 3](#)).

#### **Judge Bruce Loble, Water Court**

00:11:49 Bruce Loble, Chief Water Judge, Montana Water Court, provided an update on water claims (see Exhibit 3).

#### **Public comment**

00:14:28 Larry Luloff, Deceased Water Advocates, commended Director Sexton and Judge Loble for participating in the televised public forum.

#### **Committee questions, discussion and action, if any**

00:15:31 Sen. Wanzenried stated he has received correspondence from several water consultants stating that DNRC's error rate in identifying geocodes is over 90 percent. Director Sexton explained DNRC has been re-scrubbing the data to correct errors and has expended substantial staff resources to correct the problem. Sen. Wanzenried asked if it would be reasonable to step back and evaluate whether it would be wise to continue. Director Sexton thought there would be tweaks and that ownership updates need to go forward manually in order to get accurate ownership records. Sen. Wanzenried voiced concerns he has heard

about split water rights and wondered whether split water rights would be a problem in the system. Director Sexton responded it would depend upon whether ownership was transferred whole or divided.

- 00:21:05 Terri McLaughlin, DNRC, explained split water rights are addressed by utilizing forms for divided rights which specifically say which water rights are tied to which parcels, and split water rights are given a separate number.
- 00:22:28 Rep. Pomnichowski was curious about what would happen in May or June when DNRC receives the next Department of Revenue (DOR) records. Ms. McLaughlin explained the records will be reviewed to identify geocodes. Rep. Pomnichowski observed that if a tremendous amount of effort has to be done with every download, the problem should be fixed before the next download is received. Ms. McLaughlin explained the geocode and parcel information only has to be entered once, and the next time the property sells, all the information will be in the database.
- 00:25:13 Sen. Hamlett asked whether the DOR is utilizing the Farm Service Agency maps for the process. Ms. McLaughlin could not provide a definite answer. Sen. Hamlett recalled the DOR relied heavily on Farm Service Agency maps, which do not necessarily adhere to geographical units like a section. Sen. Hamlett could envision problems arising from relying on Farm Service Agency maps.
- 00:26:34 Chairman McNutt commented on the future and asked the number in the recent download. Director Sexton stated over 200,000 lines came in December. Chairman McNutt explained he was nervous that examination has stopped and the DNRC is working on scrubbing downloads. Director Sexton suggested land transactions are a small percentage of the download and noted split water rights will always require a manual process. Chairman McNutt wondered how much effort the DNRC putting forth in assigning geocodes. Director Sexton stated regional offices are using additional staff and water right specialists and most are completing 50 lines a day. Chairman McNutt wondered whether utilizing all the staff will put the adjudication deadlines in jeopardy. Director Sexton did not believe the deadlines would be affected.
- 00:32:29 Chairman McNutt emphasized the ownership updates need to be completed correctly and asked Judge Loble whether the water court was being impacted. Judge Loble thought the process would work out and wanted to ensure notices are being sent to the correct person.
- 00:33:58 Sen. Hamlett addressed Judge Loble and asked whether the water court used Farm Service Agency tract maps and whether those maps were helpful. Judge Loble responded the water court did not utilize Farm Service Agency tract maps. Sen. Hamlett noted a delay on the part of the DNRC would result in a delay for the water court. Judge Loble agreed. Chairman McNutt asked Director Sexton whether the DNRC utilizes Farm Service Agency tract maps. Director Sexton responded the DNRC does not utilize Farm Service Agency tract maps.

## **WATER RIGHT ENFORCEMENT**

### **Legal overview of water as property- Helen Thigpen, staff**

00:37:16 Helen Thigpen, staff attorney, Legislative Services Division, discussed her memorandum dated February 22, 2010, entitled "The nature of a water right and implications for enforcement" ([Exhibit 4](#)).

### **Role of DNRC - Candy West, DNRC chief legal counsel**

00:46:20 Candace West, Legal Counsel, DNRC, agreed with Ms. Thigpen's analysis of enforcement mechanisms. Ms. West explained enforcement is available through private property rights and through distribution under a decree. The third prong of enforcement is for a violation under the Montana Water Use Act. Ms. West explained the current enforcement process requires a written complaint, and then the DNRC investigates the violation. County Attorney offices have the same enforcement authority as the DNRC, but experience other cases which take priority over water right enforcement. Ms. West suggested County Attorneys are reluctant to take on water right enforcement actions. Ms. West noted in 2008-09, 146 written violation complaints were filed, consisting of 76 alleged illegal appropriations; 15 complaints for alleged waste of water; 26 complaints alleging the prevention of water from moving to a person with a prior use; 12 complaints for interference with the rightful use of water; and 17 complaints that fell into the category of "other." Of the complaints that were resolved, 13 complaints were resolved using a modified use to come into compliance; 8 complaints were resolved by acquiring the appropriate water right; 5 allegations were not under the Water Use Act; 25 complaints were not within DNRC's jurisdiction and were referred to the proper agency; 3 complaints resulted in civil actions, 3 complaints had insufficient information; and 17 complaints are still pending. Ms. West explained how most complaints are amicably and voluntarily resolved. Ms. West addressed the various irrigation methods and how those methods affect return flow. Ms. West expressed frustration with the salvage statute.

### **Role of Water Court - Colleen Coyle, senior water master**

01:11:54 Colleen Coyle, Senior Water Master, Montana Water Court, thought Ms. Thigpen's memorandum provided an excellent framework of water right enforcement in Montana. Ms. Coyle explained the role of the Montana Water Court in the adjudication process and the role of the district courts is to maintain enforcement of water decrees. Ms. Coyle identified 50 water commissioners state wide, but stated the number varies from year to year. Ms. Coyle stated most district court judges do not have a strong background in water law and will contact the water court for assistance. The water court also provides training for water commissioners. Ms. Coyle emphasized Water Use Act violations are separate actions from enforcement of water decrees and are not handled by the water court.

### **Role of Attorney General - Jennifer Anders**

01:22:14 Jennifer Anders, Attorney General's (AG) Office, explained the role of the attorney general in water right enforcement. The AG assists the DNRC and local county attorneys with water right enforcement actions. However, since HB 39 went into effect, the AG's office has not been requested to assist any county attorneys with water right enforcement actions.

### **Role of Water Commissioners - Lezlie Kinne, water commissioner**

01:24:33 Lezlie Kinne, a water commissioner on Willow Creek, submitted copies of the statute that applies to water commissioners and explained how the various statutes affect water commissioners and water users ([Exhibit 5](#)). Ms. Kinne explained her duties as a water commissioner. Ms. Kinne identified controversies over repair and maintenance of their ditches. Ms. Kinne explained complaints can be filed with the local district court against water commissioners, and that water users are required to maintain a headgate and measuring device.

### **Public comment**

01:35:12 Ms. Kinne continued and offered public comment and stated junior users want something the senior water users have. Ms. Kinne explained how changing use for a little bit of water can cause a large conflict and moving and manipulating even a little water will impact senior water users.

01:40:44 Larry Luloff, decreed water advocate, spoke of his past experiences with water commissioners.

### **Committee questions, discussion and action, if any**

01:52:25 Sen. Wanzenried wondered whether the DNRC would seek legislative solutions to address enforcement problems. Director Sexton explained past legislative efforts to improve enforcement, but did not know of any proposed legislation.

01:54:40 Ms. West explained the DNRC was seeking legal precedence from current court cases.

01:55:42 Sen. Wanzenried wondered whether the DNRC was wise to gamble on setting legal precedence rather than seeking legislative solutions. Ms. West clarified it would be appropriate to seek legislative solutions as well, although at this point it was not something that has been discussed department wide.

01:56:42 Sen. Barrett addressed Mr. Luloff about the bill he received for water, and asked whether any of the junior users or instream flow people were being billed. Mr. Luloff responded no. Sen. Barrett asked why they are not being billed. Mr. Luloff stated they had never pursued that option.

01:59:39 Sen. Barrett asked Ms. Kinne about the instream flows and suggested the water commissioner should be responsible for seeing each water user is billed accordingly. Ms. Kinne agreed.

02:01:49 Chairman McNutt requested clarification as to whether a case is not appealable. Ms. West explained the posture of the case is such that the declaratory ruling was granted in favor of the defendant ranch and it will be the interlocutory order that will be appealable.

## **Break**

## **Municipal Water**

### **Overview - Joe Kolman, staff**

02:34:00 Mr. Kolman explained the similarities and differences between a city's water rights and an individual's water rights and spoke about the difficulty of predicting a city's future growth and need for water.

### **Senior Water Rights Perspective - Krista Lee Evans**

02:44:24 Krista Lee Evans, Senior Water Rights Coalition, stated it is important the water right process be fairly onerous. Ms. Evans believed the consumptive use analysis should be applied consistently across the board. Ms. Evans believed the prior appropriation doctrine works, but should be applied evenly across the uses. Ms. Evans also believed a water right should not be considered abandoned if that water right has not yet been perfected.

### **City Views - Ross Miller, Mountain Water**

02:49:48 Ross Miller, a water attorney representing municipal suppliers, spoke about water right perfection and relation back to the pre-1973 water rights of municipal suppliers and new permits for municipal suppliers. Mr. Miller spoke about the City of Manhattan and the risks of injecting water and raising the water table. Mr. Miller suggested having a provision that seasonal mitigation for year round depletion is sufficient as long as there are no objectors.

### **DNRC Position - Anne Yates**

03:09:05 Anne Yates, an attorney for DNRC, submitted and reviewed "Municipal Water Rights, March 11, 2010" ([Exhibit 6](#)). Ms. Yates suggested the WPIC should look at mitigation and HB 831. Ms. Yates explained the DNRC is experiencing difficulties with matching amount, timing, and location.

### **Public comment**

03:20:00 Dave Schmidt, Water Right Solutions, Inc., testified that he has municipal clients who recognize the prior appropriation doctrine, know what they have to do, and do not want to disassemble the entire water rights system. Mr. Schmidt

addressed attenuation of flows and addressed the Manhattan water project. Mr. Schmidt believed the DNRC could recognize attenuation.

03:21:52 Walt Sales, a water user in the Gallatin, believed the DNRC's job is to protect the senior water users. Mr. Sales emphasized the difference between injection and infiltration.

03:23:10 Bill Schenk, Department of Fish, Wildlife & Parks, believed the topic of year round mitigation or augmentation of stream flows is a worthy topic for further exploration.

### **Committee questions, discussion and action, if any**

03:24:19 Sen. Hamlett addressed Ms. Yates and noted a city's discharge water is viewed as never being used because the water was not consumed. Sen. Hamlett commented that a city has to have a certain amount of water in order to make the sewer system work. Ms. Yates stated the DNRC acknowledges it takes water to run a sewer system.

03:27:21 Sen. Hamlett attended the River Governance Conference in Spokane and recalled testimony about water being treated to drinking water standards before it was injected and that the water was applied for from the state during the winter, so the water could be used for injection.

03:28:24 Chairman McNutt requested clarification on the area, amount, and timing of consumption. Chairman McNutt asked Ms. Evans to explain how that mitigation is considered to have a year round impact if irrigation water is going to be used, and there is a seasonal use right to the water. Chairman McNutt thought the real impact would occur during the irrigation season. Ms. Evans stated there is a concern during the irrigation season with adverse effect and hydro and FWP needs year round flows to continue operating. Under the change process, when an irrigation right is changed it is the applicant's responsibility to prove there is no adverse effect from the new use. The timing and location requirements were meant to ensure that existing water right holders would not be adversely affected.

03:31:48 Sen. Barrett wanted to know the date of the statutes for the new DNRC rules. Ms. Thigpen offered to obtain the information for Sen. Barrett.

03:32:22 Sen. Hamlett asked Ms. Yates to clarify that original water rights are not affected based on the calculation for historical use. Ms. Yates stated the water not approved for change remains as claimed on the original water right.

03:33:19 Sen. Wanzenried wondered what happens over time with population growth and whether we are learning to be more efficient with water. Sen. Wanzenried suggested looking at other states and consider creating incentives.

03:34:21 Mr. Kolman requested clarification and Sen. Wanzenried thought the focus should begin with municipal water.

03:35:40 Sen. Hamlett stated he recently learned that in New Mexico they passed a law saying a municipality could not condemn agricultural water rights.

### **Montana - Alberta St. Mary and Milk Rivers Water Management Initiative**

#### **Anne Yates, DNC**

03:36:39 Anne Yates provide a copy of the Milk River and St. Mary River Drainage Basin ([Exhibit 7](#)), as well as a copy of a PowerPoint presentation on the Milk River Alberta ([Exhibit 8](#)).

#### **Public comment**

No public comment was offered.

#### **Committee questions, discussion and action, if any**

There were no questions from the WPIC.

### **LUNCH**

05:07:56 The WPIC reconvened and Chairman McNutt circulated the letters to the congressional delegation for signature by the WPIC members.

### **GROUND WATER INVESTIGATION PROGRAM UPDATE**

#### **John Wheaton, MBMG**

05:08:23 John Wheaton, Montana Bureau of Mines and Geology (MBMG), gave a PowerPoint presentation entitled "Ground Water Investigation Program, Update" ([Exhibit 9](#)).

#### **Public comment**

There was no public comment.

#### **Committee questions, discussion and action, if any**

05:27:44 Rep. Bean wondered why additional wells have to be drilled for monitoring instead of using existing wells. Mr. Wheaton responded most of the wells are pre-existing.

### **UPDATE ON MILLTOWN WATER RIGHT**

#### **Gerald Mueller, Upper Clark Fork River Basin Steering Committee**

05:29:55 Gerald Mueller, Upper Clark Fork River Basin Steering Committee, gave a PowerPoint presentation entitled "Milltown Dam Water Right" ([Exhibit 10](#)).



## **Public comment**

05:48:28 Brianna Randall, Clark Fork Coalition, stated that she is excited about the next part of the restoration and believed the Milltown water right has huge implications throughout the West. Ms. Randall hoped the FWP would be the recipient of the water right.

## **Committee questions, discussion and action, if any**

05:52:41 Rep. Pomnichowski asked if there was a recognition of the value of the instream waters in a capacity other than a fishery. Mr. Mueller identified water quality aspects and recreational aspects of instream flows. Rep. Pomnichowski asked if there was value in a riverbed as conveyance for water. Mr. Mueller responded yes if something happened to affect the flow, it would affect the people downstream.

05:55:29 Rep. Pomnichowski asked if there was a formula or precedent for figuring a minimum habitat for fish or a thriving habitat for fish. Mr. Schenk responded there are a wide variety of formulas that can be used and that he could not identify which methodology might be used.

05:57:46 Sen. Barrett asked whether a precedent would be set since this is the first time that it is not the surrounding community or the humans that are the beneficiary, but rather the instream flow for the fish. Mr. Mueller stated it was the first instance that he is aware of and that removal of a dam is a relatively unusual event. Sen. Barrett recalled a superfund cleanup area where the funding received from a fine had to go to a community and not a state entity. Mr. Mueller was unaware of the requirement. Sen. Barrett recalled the reasonable use criteria included municipalities and irrigation and wondered if those would be addressed. Mr. Mueller stated the criteria are set out in statute but since this is the first time this issue has been addressed, he could not specifically respond. Sen. Barrett asked Mr. Mueller to speculate how much water will be in limbo and what the water will be used for. Mr. Mueller responded the entity will have to demonstrate how much water will be for beneficial use of the fish. Sen. Barrett commented that she finds it strange that the benefit would go completely to a state agency.

06:03:56 Mike McLane, FWP, responded to Sen. Barrett's questions and explained the state is getting the benefit since the site is part of the Natural Resource Damage lawsuit. Mr. McLane suggested someone from the Attorney General's Office could address the WPIC. Mr. McLane suggested FWP may create a state park at the site for the benefit of all, especially the local economy.

06:08:53 Sen. Hamlett asked whether it would be wise to look at how much power was generated over the course of the year to determine how much water was running through the turbines. Mr. Mueller agreed that would assist with a determination of the hydropower portion of the water right. Sen. Hamlett sought to know how many water rights holders exist below the dam. Mr. Mueller did not know. Sen. Hamlett was concerned about people above the site not having enough water

and people below having too much water. Mr. Mueller agreed if the water is not diverted and consumed above, there would be more water left in the river for people to use below. Sen. Hamlett asked about Mr. Mueller's suggestion that the drought plan would call for water equally across the board. Mr. Mueller agreed and stated they hoped this would be an opportunity rather than a battle.

- 06:13:24 Sen. Hamlett noted FWP may be placed in the position of having to make water calls. Sen. Hamlett was concerned the state could adversely affect one citizen of Montana over another. Mr. Schenk stated the FWP favors a drought plan similar to the Blackfoot River. Mr. Schenk noted the law allows water users to place calls on water and the plan would be to avoid having to make a call on water if possible. Sen. Hamlett asked if the drought was not as severe, whether FWP would make selective calls and not call for water out of the drainage with the worst drought. Mr. Schenk could not say for certain and stated the idea would be to break into subbasins so there would be an opportunity to deal with varying conditions.
- 06:17:18 Rep. Bean asked Mr. McLane whether FWP already has a nonconsumptive use on that section of the river. Mr. McLane responded FWP has a Murphy right on the Blackfoot River with a 1970 priority date and another Murphy right on Rock Creek and those two tributaries are approximately 80 percent of the flow of the Blackfoot River. Rep. Bean observed FWP already had a consumptive flow that went hand-in-hand with the nonconsumptive flow. Mr. McLane clarified FWP did not have instream flow rights on the main stem of the Clark Fork, the Little Blackfoot, and the Upper Clark Fork.
- 06:21:22 Rep. Pomnichowski wondered if FWP were the agency to hold the right, how the agency would address the other valuable and viable needs of the river. Mr. McLane explained the change of use can only be implemented and perfected to the benefit of the fisheries.
- 06:23:28 Sen. Hamlett asked whether FWP would view its increased water right as an instream flow right from the point of the Milltown Dam back upstream or whether it would be an instream flow right all the way to the Idaho border. Mr. McLane responded the statute states FWP can lease or convert the entire water right to its historic point of diversion, but can only protect the consumed amount below the headgate.

## **WATER MARKETING AND THE BUREAU OF RECLAMATION**

### **Mark Beatty, Bureau of Reclamation**

- 06:26:23 Mark Beatty, Bureau of Reclamation, reported on the Bureau of Reclamation's current marketing opportunities and practices. Mr. Beatty submitted written testimony ([Exhibit 11](#)).

**Status of Hungry Horse negotiations, Gerald Mueller, Clark Fork Basin  
Water Management Task Force**

06:34:00 Gerald Mueller, Clark Fork River Task Force, gave a PowerPoint presentation on the Clark Fork River Task Force ([Exhibit 12](#)).

**Moonlight Basin/BOR experience, Kevin Germain**

06:51:56 Mr. Germain spoke about Moonlight Basin's experience when it filed for a water right to divert water to fill two reservoirs. Mr. Germain stated Moonlight Basin's experience with the Bureau of Reclamation was excellent.

**Public comment**

06:55:58 Director Sexton stated with the Hungry Horse issue, the DNRC has a significant role in soliciting a contract and the experience with Hungry Horse has not been easy. Director Sexton emphasized the Hungry Horse issue consists of a three-way negotiation and a convergence of issues.

**Committee questions, discussion and action, if any**

06:58:07 Sen. Hamlett wondered if negotiations were to fail with the Task Force and the Bureau of Reclamation (BOR), whether the state could buy water from the Confederated Salish & Kootenai Tribe (CSKT). Mr. Mueller clarified the BOR is negotiating with the DNRC and, yes, the state has the option of compacting with the CSKT.

**Break**

07:20:44 Terri McLaughlin, DNRC, explained the process for Scrubbing Data for Water Right Ownership Automation ([Exhibit 13](#)).

07:26:45 Chairman McNutt commented on the importance of completing the water adjudication in Montana.

**CONTINUED DISCUSSION ON MENU OPTIONS FOR EXEMPT WELLS, MITIGATION, ETC.**

07:29:43 Chairman McNutt addressed the need to give guidance to the working group. McNutt was intrigued about the possibility of having mitigation water available for something that could develop in the future. Chairman McNutt predicted the issue could be litigated and saw the need to determine how and when mitigation water would be available. Chairman McNutt thought it would be appropriate for Sen. Wanzonried and himself to attend the work group meetings to keep the work group on track.

07:32:43 Mr. Kolman stated the budget would allow Chairman McNutt and Sen. Wanzonried to attend one work group meeting and the work group would be subject to the open meeting laws.

- 07:35:50 Chairman McNutt thought mitigation would be a good beginning and the work group should consider how to facilitate mitigation.
- 07:37:01 Rep. Pomnichowski recalled Chairman McNutt's comment that a work group should come up with workable actions. Rep. Pomnichowski thought mitigation is happening in anticipation of an adverse effect and that she would like the work group to address exempt wells in high density areas and discuss what we can do to avoid needing mitigation to avoid adverse effect. Rep. Pomnichowski would like the work group to find points of agreement on how to minimize exempt well use.
- 07:38:27 Chairman McNutt stated mitigation water would not necessarily be used to offset depletion only due to exempt wells, although exempt wells would have to be part of the discussion.
- 07:39:02 Rep. Bean commented he would like to protect exempt wells in rural areas and does not want to see the process become cumbersome and expensive. Chairman McNutt agreed the exempt well issue needs to be confined to closed basins since exempt wells are not a problem in the majority of Montana.
- 07:40:54 Rep. McChesney thought it would be imperative to avoid thinking this could be a one-shoe-fits-all issue, and the issue of exempt wells should be limited to closed basins.
- 07:41:54 Chairman McNutt stated this would be a starting point and there would be amendments and adjustments in the future. Chairman McNutt thought there were good minds participating in the work group who had on-the-ground experience.
- 07:43:30 Chairman Wanzonried believed it would be helpful if the WPIC could agree that exempt wells are a problem that needs to be addressed in the affected areas or, in the alternative, decide the status quo is acceptable.
- 07:44:58 Chairman McNutt agreed the issue should be addressed in areas if it is determined exempt wells are a problem in that area.
- 07:45:22 Rep. McChesney trusted the end product would be based on conversations and good sound scientific data.
- 07:45:52 Rep. Bean commented the work group is diverse enough to address his concerns.
- 07:46:08 Sen. Wanzonried thought the size of the work group would increase and stated he hoped the group could focus on how it will work and how mitigation water can be used. Sen. Wanzonried had concerns about enforcing any limitations on exempt wells and how mitigation water will be made available.
- 07:48:15 Sen. Hamlett thought the work group should remember that the agriculture and oil and gas industries depend on exempt wells, and the state relies heavily on

production taxes. Flathead Lake is the fifth largest lake in the world and has water problems.

**Public comment**

There was no public comment offered.

**Continued discussion on menu options for coal bed methane water**

- 07:50:47 Chairman McNutt called for comments or suggestions.
- 07:50:58 Rep. McChesney stated the objective of the legislation he carried has been met and he does not see that much more could be accomplished. Rep. McChesney suggested the issue should be put on the back burner.
- 07:51:37 Chairman McNutt recalled the issue had been around a long time and that the legislature had devoted countless hours to the issue. Chairman McNutt noted the law is there, it is working, and industry wants to work within the framework of the law.
- 07:53:09 Sen. Hamlett would like the CBM industry to look at reinjection to see if it will work and whether it is economically feasible. Chairman McNutt noted some are successful and some are not. Chairman McNutt suggested if a person has potable water that has been taken, they would want to reinject it into a potable water source.
- 07:54:49 Tom Richmond, Board of Oil and Gas Conservation, stated there are nine injection wells permitted and of the nine, two will take some water, but not much water. Mr. Richmond stated Fidelity has applied for some deeper injection wells and industry has not written off injection as a potential solution. Mr. Richmond explained that the concept of re-injection is of limited success; however, the City of Gillette was a success story.
- 07:57:39 Sen. Wanzenried noted there are issues with respect to CBM, and the WPIC should understand industry's outstanding issues and some of the proposals that may be coming before the Legislature.
- 07:58:28 Jon Metropoulos, representing Fidelity, is at the very beginning stages of planning for next session, and offered to communicate legislative proposals to the WPIC as those proposals come to fruition. Sen. Wanzenried thanked Mr. Metropoulos.

**Public comment**

There was no public comment offered.

## **Committee discussion other issues**

- 08:00:09 Mr. Kolman noted there are three WPIC meetings remaining and spoke about the amount of information presented to the WPIC. Mr. Kolman stated the WPIC can begin to focus on specific issues and request more in-depth information. Mr. Kolman suggested the WPIC could look at BOR sites at Canyon Ferry, instream flows in Prickly Pear Creek, and the infiltration gallery in the Helena Valley.
- 08:03:06 Chairman McNutt commented on the value of doing outreach in other areas of the state. Chairman McNutt announced a presentation in Great Falls on the March 29, 2010, sponsored by the Farmers Union. Sen. Murphy, Rep. Bean, Rep. Pomnichowski, and Sen. Hamlett agreed to attend the conference with Chairman McNutt. Chairman McNutt saw value in speaking with people on the ground with real problems and real issues. There will also be a panel discussion pertaining to the Milk River in Havre on the March 30, 2010, and in Glasgow on March 31.

## **Administrative matters**

### **Next meeting - Scheduled May 11-12, Helena**

- 08:06:09 Sen. Wanzenried stated he would like to hear a presentation on the high technology used to access modeling.
- 08:07:24 Mr. Metesh recommended the WPIC receive the presentation and thought it would be well-worth looking at and stated the presentation would take approximately one hour.
- 08:08:51 Chairman McNutt announced the July meeting would need to be rescheduled to Monday and Tuesday July 26 and 27, 2010.
- 08:11:25 Mr. Kolman identified correspondence received from an existing water rights holder in Hinsdale and that the constituent had requested a response. Mr. Kolman will work with Sen. Wanzenried and Chairman McNutt to formulate a response.
- 08:12:17 Sen. Barrett recommended the response clarify the WPIC can only address state issues and state laws and the WPIC does not have jurisdiction over the federal government.
- 08:13:30 Chairman McNutt commented on past attempts to work with the constituent and noted there were jurisdictional problems.
- 08:17:46 Sen. Wanzenried voiced concerns about the WPIC jurisdiction versus the jurisdiction of the Environmental Quality Council and noted the resurfacing of an Emerald Hill issue with contaminated ground water.
- 08:19:31 Chairman McNutt suggested the issue would come under the purview of the DEQ and then oversight would come from the EQC.

08:20:10 Steve Kilbreath, DEQ, stated there is a DEQ Enforcement Division that addressed water-quality complaints on a routine basis and offered to assist Sen. Wanzenried.

**Other business**

08:21:03 Mr. Kolman asked interested persons to sign up for automatic e-mail notification of work group meetings.

**Instructions to staff**

There were no further instructions to staff.

**Public comment on any matter within the WPIC jurisdiction.**

08:22:06 Jeff Tiberi, Montana Conservation Districts, announced an upcoming symposium in September. Mr. Teabury explained how one district suggested polling all conservation districts to see if they would be willing to look for water storage opportunities. Mr. Tiberi thought the poll results should be of some value.

08:23:58 Tom Richmond, Board of Oil and Gas, addressed the issue of whether the oil and gas industry uses exempt wells. Mr. Richmond explained exempt wells are utilized in areas where drilling water is difficult to obtain. Mr. Richmond did not have an idea of how many exempt wells there are.

**ADJOURN**

08:26:22 Chairman McNutt adjourned the meeting at 4:28 P.M.

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