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## Water Policy Interim Committee

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### 61st Montana Legislature

#### SENATE MEMBERS

DEBBY BARRETT  
BRADLEY MAXON HAMLETT  
TERRY MURPHY  
DAVID WANZENRIED

#### HOUSE MEMBERS

RUSSELL BEAN  
BILL MCCHESENEY  
WALTER MCNUTT  
JP POMNICHOWSKI

#### COMMITTEE STAFF

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

# MINUTES

Approved September 21, 2009

Date: July 9, 2009

Room 172, Capitol Building  
Helena, Montana

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, Chairman  
SEN. DAVID WANZENRIED, Vice Chairman  
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  
CYNTHIA PETERSON, Secretary

## Visitors

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

## **COMMITTEE ACTION**

- The Water Policy Interim Committee (WPIC) members elected Rep. Walter McNutt as Chairman and Sen. David Wanzenried as Vice Chairman.
- The WPIC adopted the draft rules, including the appropriate change to the e-mail procedure.

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

00:00:01 Sen. Terry Murphy, Chairman *pro tem* of the WPIC, called the meeting to order at 9:00 a.m. The secretary called roll ([Attachment 3](#)).

00:01:03 The WPIC members introduced themselves.

## **WPIC OVERVIEW**

### **Staff Introductions**

00:02:26 The WPIC staff introduced themselves.

### **WPIC Overview - Mr. Kolman**

00:08:22 Mr. Kolman provided an overview and history of the WPIC.

### **Committee Questions and Discussion**

00:23:11 Sen. Murphy asked whether the WPIC members wanted to receive electronic copies of the e-mails Mr. Kolman receives. Mr. Kolman commented on e-mails.

00:24:21 Sen. Barrett requested all e-mails be forwarded to her.

00:24:56 Rep. McChesney agreed with Sen. Barrett and commented on the importance of receiving all information.

00:25:40 Rep. McNutt agreed with Sen. Barrett and commented on the importance of receiving all information.

## **AGENCY OVERVIEWS**

### **Department of Natural Resources**

00:26:55 Mary Sexton, Director, Department of Natural Resources and Conservation (DNRC), introduced DNRC staff and provided an update on DNRC's water-

related activities. Director Sexton submitted written information entitled "HB 840 as Amended" ([EXHIBIT 1](#)).

### **Water Court**

00:43:46 Bruce Loble, Chief Water Judge, Montana Water Court, provided a history and update on water court activities. Judge Loble submitted "Basin Location and Adjudication Status, 5/21/09" ([EXHIBIT 2](#)). Judge Loble invited the WPIC members to review a bound copy of the decrees issued for Basin 41QJ. Judge Loble also circulated an example of an objection list.

### **Department of Environmental Quality**

01:01:27 Tom Livers, Deputy Director, Department of Environmental Quality (DEQ), introduced DEQ staff and explained the DEQ's role and duties regarding water quality. Mr. Livers also identified current water issues being addressed by the DEQ.

### **Department of Fish, Wildlife and Parks**

01:14:48 Bill Schenk, Attorney, Department of Fish, Wildlife, and Parks (FWP), explained FWP's interests in water quality and water quantity. Mr. Schenk also reviewed the goals and objectives of FWP's strategic plan.

### **Committee Questions and Discussion**

01:35:55 Rep. McChesney requested the agencies to provide him with a list of agency contacts, their areas of expertise, phone numbers, and e-mails.

01:36:24 Rep. Pomnichowski asked whether FWP is participating in the Total Maximum Daily Load (TMDL) process. Mr. Schenk responded. Rep. Pomnichowski asked whether FWP was actively participating in the 310 Permitting Process. Mr. Schenk responded.

01:38:53 Sen. Barrett noted the agencies mentioned the importance of the various groups that are protecting water resources and wondered whether a group is needed in any other part of the state. Director Sexton responded.

01:41:25 Mr. Livers agreed with Director Sexton's response and comments. Both Director Sexton and Mr. Livers offered to obtain more information for Sen. Barrett.

01:42:29 Mr. Schenk responded to Sen. Barrett's inquiry.

01:43:48 Sen. Murphy asked how FWP quantifies fishery value in a section of a watershed. Mr. Schenk responded.

01:46:56 Sen. Barrett recalled Mr. Schenk's reference to FWP's goal and objective to enforce the calls for instream flow and asked whether that would require legislation and increased FTEs for FWP. Mr. Schenk responded. Sen. Barrett

asked whether FWP was using all of its stock water rights. Mr. Schenk responded.

(BREAK)

02:01:33 Sen. Murphy reconvened the meeting.

#### **ELECTION OF WPIC CHAIR AND VICE CHAIR**

02:03:33 Sen. Murphy explained the procedure for election of officers.

02:04:05 Sen. Wanzenried nominated Rep. McNutt as Chairman. Sen. Wanzenried moved to close the nominations and elect Rep. McNutt by acclamation. The motion carried unanimously by voice vote.

02:06:14 Rep. McNutt nominated Sen. Wanzenried as Vice Chairman. Rep. McChesney moved to close the nominations and elect Sen. Wanzenried by acclamation. The motion carried unanimously by voice vote.

#### **PUBLIC COMMENT**

##### **Water-related Organizations**

02:08:42 Gretchen Rupp, Montana University System Water Center, submitted "Montana Water Center, 2009 Highlights" ([EXHIBIT 3](#)), and "Montana Water Research & Data Collection, Update: Summer 2009" ([EXHIBIT 4](#)). Ms. Rupp responded to Sen. Barrett's earlier question regarding areas in Montana that may be lacking in having an active watershed group.

02:16:32 Gerald Mueller, representing the Upper Clark Fork River Basin Steering Committee ([EXHIBIT 5](#)), and the Clark Fork River Basin Task Force ([EXHIBIT 6](#)), submitted "Managing Montana's Water: Challenges Facing the Prior Appropriation Doctrine in the 21st Century" ([EXHIBIT 7](#)).

02:23:28 Larry Luloff, Deceased Water Advocates, supported senior water rights.

02:25:44 Deborah Earl, Montana Watershed Coordination Council ([EXHIBIT 8](#)), submitted the following information regarding the Montana Water Course:

- The Montana Water Course ([EXHIBIT 9](#));
- Representing Property with Wetlands and Riparian Areas ([EXHIBIT 10](#));
- Landowners' Guide to Eastern Montana Wetlands and Grasslands, Incentives to Improve Land for Livestock and Wildlife ([EXHIBIT 11](#));
- Montana's Ground Water, A Citizen's Guide to Understanding and Protecting Ground Water ([EXHIBIT 12](#));
- A Guidebook for Montana Ponds, What you Need to Know About Ponds and Alternatives ([EXHIBIT 13](#)); and
- A Landowners' Guide to Montana Wetlands ([EXHIBIT 14](#)).

Ms. Earl requested that her organization be placed on a future WPIC agenda.

02:31:16 Mark Aagenes, Montana Trout Unlimited, explained the importance of Montana's water to Trout Unlimited's mission.

02:33:11 Beth Kaeding, Northern Plains Resource Council, was concerned about CBM development and senior water rights (**EXHIBIT 15**).

02:38:02 Jeff Tiberi, Montana Association of Conservation Districts, explained the role of the Montana Association of Conservation Districts in Montana's water issues.

02:43:07 Mark Fix, a rancher and irrigator in the Tongue River Drainage and Chairman of the Coal Bed Methane Task Force of the Northern Plains Resource Council, believed enforcement of senior water rights should be a priority for the WPIC.

02:47:04 Brianna Randall, Clark Fork Coalition, urged the WPIC to consider who is using the water, what the water is being used for, where the water is located, and why there are conflicts over water.

02:49:44 Brad Sauer, a rancher from Miles City and a member of the Northern Plains Resource Council, applauded the WPIC on its efforts.

(LUNCH)

04:03:57 Chairman McNutt called the meeting back to order.

## **OVERVIEW OF GROUND WATER INVESTIGATION PROGRAM**

04:04:23 Amy Bamber, Chair, Ground Water Assessment Steering Committee, gave a PowerPoint presentation. Ms. Bamber submitted Ground Water Assessment Program Steering Committee November 24, 2008, meeting notes (**EXHIBIT 16**); Ground Water Assessment Program Steering Committee December 3, 2008, meeting notes (**EXHIBIT 17**); Ground Water Assessment Program Steering Committee, May 27, 2009, criteria finalization meeting notes (**EXHIBIT 18**); and Minutes, Ground Water Assessment Program Steering Committee Meeting, Groundwater Investigations Program, June 17, 2009 (**EXHIBIT 19**).

04:18:03 John Metesh, Montana Bureau of Mines and Geology (MBMG), gave a PowerPoint presentation (**EXHIBIT 20**). Mr. Metesh also submitted a copy of HB 52 (**EXHIBIT 21**), and a diagram indicating the issues and characteristics for 32 areas (**EXHIBIT 22**).

## **Committee Questions and Discussion**

04:36:36 Rep. Pomnichowski emphasized she represents Gallatin County and noted there would be six to seven studies conducted per biennium and asked whether the data and models would be updated. Mr. Metesh responded. Rep. Pomnichowski wondered how often there would be new criteria and how often the list would be updated. Mr. Metesh responded.

04:41:55 Sen. Barrett asked whether weather and drought affect ground water. Mr. Metesh agreed and provided an explanation. Sen. Barrett wondered how much agriculture depletion was related to drought.

### **COMMITTEE DISCUSSION OF STUDY PRIORITIES**

04:45:00 Mr. Kolman provided an overview of the WPIC's study priorities ([EXHIBIT 23](#)).

04:52:28 Chairman McNutt provided directions to the WPIC in prioritizing the key issues regarding water policy.

04:53:47 Rep. Bean suggested looking at the federal government in an attempt to garnish control over the state's water and requested that he be kept updated. Mr. Kolman agreed to keep the WPIC informed regarding activity in Washington, D.C., regarding navigable waters and the Clean Water and Restoration Act.

04:55:30 Sen. Murphy summarized concerns he has heard from the agriculture and irrigation communities about the DNRC.

04:58:28 Chairman McNutt commented the DNRC's image is not as positive as it should be, although admitted the fault may not lie entirely with the DNRC. Chairman McNutt suggested having the DNRC address the WPIC.

05:04:35 Sen. Murphy cited the level of frustration exhibited by people who deal with the DNRC, but clarified he was not making judgment, but was attempting to open communication.

05:05:33 Rep. Pomnichowski stated she would like to include the DEQ and enable the agencies to work together better. Rep. Pomnichowski would also like to explore the cumulative effects of exempt wells. Rep. Pomnichowski expressed her desire to hear from both agencies.

05:07:15 Chairman McNutt suggested including the potential cumulative effects of septic systems and identifying specific problems.

05:09:12 Rep. McChesney recalled that during the last interim, the DEQ and the DNRC were able to work together better on issues brought to the forefront. Rep. McChesney would like an update on the interrelation between the DEQ and the DNRC.

05:11:11 Sen. Hamlett addressed the transfer of water rights and the personal responsibility of the parties in a real estate transaction.

05:12:26 Sen. Barrett agreed with Rep. Bean's comments regarding navigable waters and would like the state to address what is a navigable water right and the various tests of navigability.

05:13:35 Rep. McNutt suggested having a presentation to explain the differences in meanings for what is considered "navigable."

05:15:08 Sen. Wanzenried wondered in what way the Environmental Quality Council (EQC) would address water issues and asked Mr. Kolman to clarify.

05:15:50 Mr. Kolman clarified the EQC's statutory requirements include oversight of the DNRC and the DEQ, water adjudication oversight, oversight of the State Water Plan, and instream leasing.

05:17:13 Mr. Everts explained the two approaches of complying with statutory requirements. The EQC decided it will receive the reports regarding its water quality statutory duties, and the EQC Chair will work with the WPIC Chair, but the WPIC will pursue the issues.

05:18:33 Sen. Wanzenried wondered how much FTE time would be required. Mr. Everts responded. Sen. Wanzenried cited the institutional knowledge in *Water - Montana's Treasure*. Sen. Wanzenried expressed a desire to monitor stream flows and learn about re-injecting coal bed methane (CBM) water.

05:24:35 Chairman McNutt explained the work of the last WPIC and its attempts to address exempt wells. Chairman McNutt was concerned about water quality in mixing zones. Additionally, Chairman McNutt envisioned a need to monitor senior water right protection and enforcement. Chairman McNutt would like to receive updates from the EQC on water adjudication.

05:32:46 Sen. Barrett stated she would like to see the WPIC address water marketing and water leasing. Sen. Barrett would also like the WPIC to look at water storage.

05:34:43 Chairman McNutt agreed water marketing and water leasing would be occurring in the future. Chairman McNutt identified the situation created by development in Gallatin County.

05:40:17 Rep. Pomnichowski commented about individual property rights and the constitutional right of Montanan's to put the water to beneficial use.

05:41:50 Sen. Murphy addressed Sen. Hamlett and asked whether changing a water right would require hiring an attorney. Sen. Hamlett responded.

05:44:54 Chairman McNutt commented on Sen. Hamlett's response.

05:45:14 Sen. Wanzenried emphasized the importance of fixing the problems with exempt wells. Sen. Wanzenried suggested navigability would include recreation, so the scope would necessarily go beyond water.

05:48:18 Sen. Hamlett clarified if a municipality changes its point of diversion, the amount of the water right is at risk. Chairman McNutt agreed there is a risk involved.

05:49:50 Sen. Barrett noted the navigable water definition for FWP is related to commerce. Sen. Barrett stated the WPIC would need feedback from members of the public. Sen. Barrett also identified a need to get Mr. Tubbs replaced with the right

applicant and proposed the WPIC write a letter to DNRC emphasizing the importance of hiring the correct person to fill Mr. Tubb's job.

05:51:51 Chairman McNutt agreed with the importance of hiring the right person. Chairman McNutt also agreed with the suggestion of sending a letter to the DNRC. Chairman McNutt also desired to have an update on EQC activities. Chairman McNutt did not see a need for an update from the Montana Bureau of Mines and Geology (MBMG) and the water court at every WPIC meeting.

05:54:51 Rep. McChesney stated HB 575 pointed out serious cross-jurisdictional issues that need to be addressed and asked the WPIC to provide direction as to how to identify and resolve those issues.

05:56:57 Chairman McNutt requested the WPIC members to think about the issue and noted the issue would be large.

(BREAK)

06:15:55 Chairman McNutt reconvened the meeting.

#### **Public Comment**

06:16:37 John Youngberg, Montana Farm Bureau, offered support to the WPIC and identified adjudication as a top priority.

06:21:41 Myra Shults, Montana Association of Counties (MACo), expressed interest in the issue of exempt wells.

06:23:44 Ross Miller, representing Mountain Water Company and the City of Hamilton, submitted a written document entitled "The Current Situation" ([EXHIBIT 24](#)).

06:35:12 Krista Lee Evans, Senior Water Rights Coalition, emphasized the importance of the prior appropriation doctrine and water rights management.

06:40:37 Mike Murphy, Montana Water Resources Association, thanked the WPIC for addressing tough issues. Mr. Murphy believed the federal Clean Water Restoration Act could severely impact the way Montana manages its water.

06:44:05 Glenn Oppel, Montana Association of REALTORS®, hoped to come up with ideas on how Montana could move forward. Mr. Opel submitted "Evaluation of Montana's Water Resources" ([EXHIBIT 25](#)).

06:47:29 Beth Kaeding, Northern Plains Resource Council, identified Montana's water resources as precious.

06:48:45 Mark Fix, Coal Bed Methane Task Force, Northern Plains Resource Council, reiterated the importance of the prior appropriation doctrine.



- 06:52:49 Gary Forrester, Fidelity Exploration and Production, emphasized CBM production is regulated by the Board of Oil and Gas, and the information is available from state and federal governments.
- 06:56:51 Gerald Mueller, Upper Clark Fork River Basin Steering Committee, recommended the WPIC consider the issues of exempt wells and water banking.
- 06:59:21 Brad Sauer, a rancher from Rosebud Creek, thought there was substantial opportunities with conservation measures.
- 07:00:19 Bill Schenk, FWP, depicted the issues as contradictory.

### **ADMINISTRATIVE MATTERS**

- 07:07:53 Mr. Kolman summarized the priorities identified by the WPIC members.

#### **Budget Overview/WPIC Meeting Dates - Mr. Kolman**

- 07:11:39 Mr. Kolman explained the WPIC budget and tentative WPIC meeting schedule (**EXHIBIT 27**).
- 07:13:16 Sen. Barrett commented on proposed September dates. The September WPIC meeting was changed to September 21 to accommodate Sen. Barrett and Chairman McNutt.
- 07:15:32 Rep. Pomnichowski suggested waiting to firm up WPIC meeting dates.
- 07:15:50 Sen. Wanzenried suggested there would be value in meeting outside of Helena.
- 07:17:42 Chairman McNutt stated out-of-Helena meetings would be discussed at the next WPIC meeting and commented on the benefit of meeting outside of Helena.
- 07:18:13 Rep. McChesney commented on the value of out-of-town meetings.

#### **Adoption of Rules - Mr. Kolman**

- 07:20:24 Mr. Kolman directed the WPIC to the proposed rules (**EXHIBIT 26**). Sen. Wanzenried moved the adoption of the draft rules with the appropriate change to the e-mail procedure. The motion carried unanimously by voice vote.

### **INSTRUCTIONS TO STAFF**

- 07:21:43 Chairman McNutt and Sen. Wanzenried agreed to work with Mr. Kolman to develop a draft work plan.
- 07:22:23 Sen. Barrett suggested proxies be allowed for agenda items.
- 07:23:05 Sen. Murphy agreed the use of proxies should be tightened.

07:23:56 Mr. Everts directed the WPIC members to the rules which were just adopted and consistent with Sen. Barrett's suggestion.

**PUBLIC COMMENT ON ANY MATTER WITHIN THE WPIC JURISDICTION**

There was no further public comment.

**ADJOURN**

07:26:07 The meeting adjourned at 4:25 p.m.

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