



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

January 11, 2016
Room 172, Capitol Building
Helena, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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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 as amended from September 2-3, 2015.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Hamlett called the meeting to order at 9:02 a.m. The secretary called the roll. (Attachment 3)

Approval of minutes

00:01:32 Sen. Hamlett said there is one reference to Rep. Z. Brown that needs to be changed from Sen. to Rep.
00:02:15 Rep. Glimm moved to accept the September 2-3, 2015 minutes as amended. The motion carried unanimously by voice vote of those present and voting.

UPDATE ON CSKT COMPACT IMPLEMENTATION AND RELATED ISSUES

00:02:44 Tim Davis, administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC), provided a copy of the agenda for the Confederated Salish and Kootenai Tribe (CSKT) Compact Implementation Technical Team meeting on December 3, 2105. (Exhibit 1) He presented a summary from the meeting.
00:03:27 Sen. Vincent entered the meeting.
00:06:48 John Carter, legal counsel, CSKT, said state-appropriated funds are currently being spent on pre-implementation projects. He discussed a dilemma the Water Court is facing when issuing temporary preliminary decrees prior to congressional approval of a compact.

Public Comment:

00:12:28 Dick Erb, Moise Valley

Committee Questions and Discussion:

00:17:59 Rep. Williams recommended that during the meeting tomorrow the WPIC follow up with Russ McElyea, chief water judge, Montana Water Court, about issuing temporary preliminary decrees before the compact is approved. Sen. Stewart - Peregoy agreed.
00:19:34 Sen. Hamlett asked Mr. Carter for his opinion. Mr. Carter said he recommends legislative action to extend the deadline for issuing preliminary decrees.

INSTREAM LEASING REPORT (85-2-436, MCA)

00:21:17 Mike McLane, water conservation specialist, Department of Fish, Wildlife, and Parks, presented an overview of the biennial progress report on water leasing activities. ([Exhibit 2](#))

Public Comment: None

Committee Questions and Discussion:

00:31:54 Rep. Z. Brown asked Mr. McLane about the incentives in the statute for landowners to participate in leases, how the exchange works, and how it benefits the water right holder.

00:35:29 Rep. Z. Brown asked Mr. McLane if funds are exchanged for leases. Mr. McLane said FWP does not have a fund that buys water, but water conservation projects get some priority through the Future Fisheries Program.

00:37:12 Rep. Z. Brown asked Mr. McLane about statutory limits on the duration and renewal of leases.

00:39:00 Rep. Williams asked Mr. Davis to clarify DNRC's response to FWP's request for a rule that would allow FWP to take a temporary lease and make permanent conversions. Mr. Davis said the current statute is adequate to change water rights to permanent instream flows without a change in the rules.

00:40:15 Rep. Williams asked Mr. McLane for his response. Mr. McLane said the FWP asked for a rule change.

00:41:35 Rep. Williams said FWP has the unique authority to acquire and permanently convert to instream flow water rights. She recommended that future reports include a section on permanent conversions and asked how much of a priority it is for FWP. Mr. McLane said the department's ability to work on instream flows is limited because of its other water adjudication activities.

00:44:33 Rep. Williams asked Mr. McLane if FWP's ability to lease instream flow water rights is widely known among water users. Mr. McLane said not every water user knows about the water leasing program, but there are other entities leasing water rights and doing conversions in the state.

00:47:19 Sen. Vincent asked Mr. McLane who the primary entities are in water leasing. Mr. McLane said the Montana Water Trust and Trout Unlimited have a number of leases.

00:48:17 Sen. Hamlett asked Mr. McLane about water right holders who are doing exchanges that are working well, but may not be legal. Mr. McLane said under the Water Use Act approval is needed from the DNRC anytime the point of diversion is modified or changes are made to the place of use, purpose of use, or place of storage.

00:50:03 Sen. Hamlett asked Mr. Davis if the DNRC has done any studies on gated pipe irrigation. Mr. Davis said he will find out.

00:50:49 Sen. Hamlett asked Mr. Davis about the water users who are working together and exchanging water without getting approval from the DNRC. Mr. Davis said there needs to be a way to incorporate what water users have been doing historically into the Water Use Act.

00:51:42 Sen. Hamlett asked Mr. Davis if the DNRC wants to become more involved in the issue. Mr. Davis said the DNRC will do an investigation only if a complaint is made.

- 00:53:19 Sen. Hamlett asked Mr. Davis about changes in climate and adjusting water use according to flow and not season. Mr. Davis said it was discussed in the state water planning process and one of the recommendations was to look at the dynamics of changes in precipitation and timing of runoff.
- 00:55:02 Sen. Hamlett asked Mr. Davis about the ability of a senior water right holder to make a call for water if they did not receive water during their time of use.
- 00:56:14 Sen. Vincent asked Mr. Davis why the DNRC does not want to make a rule that would allow FWP to take a temporary lease and make it a permanent conversion.
- 00:57:29 Rep. Glimm asked if a senior water right holder can make a preemptive call for water early in the season when water is most abundant. Mr. Davis said there isn't a way to preemptively call a water right.

U.S. FOREST SERVICE WATER RESERVATIONS (85-20-1401, MCA)

- 00:59:09 Mr. Davis presented an update on the U.S. Forest Service-Montana Water Rights Compact. [\(Exhibit 3\)](#)
- 01:01:14 John Hagenruber, liaison to the State of Montana, U.S. Forest Service, said as part of the negotiations between the USFS and the state of Montana, the two types of water rights agreed to were consumptive water rights and non-consumptive water rights. He said the DNRC and FWP have been great partners working with the USFS on implementing the compact.

Public Comment: None

Committee Questions and Discussion:

- 01:02:56 Sen. Vincent asked Mr. Hagenruber if the direction has changed on the watersheds that will be done next. Mr. Hagenruber said it has not.
- 01:03:59 Rep. Williams asked Mr. Hagenruber why some of the instream flow water right applications have been cancelled. Mr. Hagenruber referred the question to Mr. Davis. Mr. Davis said most of the applications were cancelled because they were not consistent with statute.
- 01:05:25 Sen. Hamlett asked Mr. Hagenruber if the USFS will need to go through the DNRC if it wants to drill a well on land that it manages. Mr. Hagenruber said it will.

REVIEW OF WATER INFORMATION SYSTEM

- 01:06:33 Troy Blandford, manager, Water Information System, State Library, presented the history, purpose, and goals of the water information system. [\(Exhibit 4\)](#)
- 01:13:18 Mr. Blandford discussed state programs that benefit from or could benefit from a standardized statewide hydrography data set and why it is important. [\(Exhibit 5\)](#)

Public Comment: None

Committee Questions and Discussion:

- 01:14:55 Rep. Williams asked Mr. Blandford how effective and helpful the information is for water commissioners and if there is any area for improvement. Mr. Blandford said it is useful in locating where diversions are and for mapping purposes.
- 01:16:00 Rep. Williams asked Mr. Blandford if they can track level of use. Mr. Blandford said they cannot.
- 01:16:24 Sen. Vincent asked Mr. Blandford if water commissioners can use the database to update information on points of diversion. Mr. Blandford said they cannot, but there is a process to submit revisions.
- 01:18:01 Sen. Hamlett asked Mr. Blandford how much of the information is used.
- 01:18:57 Sen. Hamlett asked if there is a link on the DNRC website referring people to the state library. Mr. Blandford said there is.
- 01:19:42 Recess
- 01:41:05 Reconvene

PROGRAM EVALUATION: WATER QUALITY PLANNING BUREAU

- 01:41:14 Jason Mohr, research analyst, Legislative Services Division, presented the program evaluation on the Water Quality Planning Bureau. [\(Exhibit 6\)](#)
- 01:42:11 Mr. Mohr said he received one public comment related to public water supply. [\(Exhibit 7\)](#)
- 01:49:46 Eric Urban, bureau chief, Water Quality Planning Bureau, Planning, Prevention, and Assistance Division, Department of Environmental Quality (DEQ), said water quality standards are a major focus of the division.

Public Comment:

- 01:51:13 Ada Montague, board member, Montana Aquatic Resources Services (MARS). [\(Exhibit 8\)](#)

Committee Questions and Discussion:

- 01:55:03 Rep. Williams asked Ms. Montague about the need for future legislation on water quality trading.
- 01:56:43 Rep. Williams asked Mr. Urban how well Montana is set up to do water quality trading.
- 01:58:06 Rep. Glimm asked Mr. Urban about reorganization in the division.
- 01:59:25 Sen. Vincent asked Mr. Urban to keep the WPIC informed of any policy changes the bureau would like it to consider after their discussions with MARS.
- 02:00:24 Sen. Vincent asked Mr. Urban to explain what would constitute a change to an existing Montana Pollutant Discharge Elimination System (MPDES) permit that would require a review.
- 02:02:44 Sen. Hamlett asked Mr. Urban to give a hypothetical example of how water quality trading works.
- 02:04:00 Sen. Hamlett asked Mr. Urban if the DEQ is currently measuring pharmaceuticals in water. Mr. Urban said its focus is to remove pharmaceuticals from the environment.

02:05:14 Sen. Hamlett asked Mr. Urban if DEQ does all of the monitoring for pharmaceuticals in state waters. Mr. Urban said it does limited monitoring and that it is difficult to find pharmaceuticals in water once they have been metabolized by the human body.

02:06:29 Sen. Hamlett asked Mr. Urban whose responsibility it is to monitor pollutants in water. Mr. Urban said all of the discharge permits in the state require the permittee to actively monitor their effluence.

02:07:52 Rep. Williams asked Mr. Urban about DEQ's approach to water reuse in Montana.

02:10:44 Sen. Hamlett asked Ms. Montague if MARS is looking at the issue of pharmaceuticals in water. Ms. Montague said it is not.

02:11:28 Sen. Vincent thanked Mr. Mohr for the information he provided.

02:11:45 Sen. Hamlett commented on the quality and availability of the legislative staff.

02:12:30 Sen. Hamlett asked Mr. Mohr about the amount of time needed for the afternoon agenda.

02:13:35 Recess for lunch

03:22:06 Reconvene

STUDY OF WATER AVAILABILITY AND SUPPLY

Water Marketing, Water Banking

03:22:37 Mr. Davis discussed the process on mitigation banking and mitigation, how mitigation and mitigation banking were established, what they do, and how they enable a new permit to go forward. He said HB 24 (2011) created a process to create mitigation banks.

03:29:19 Carl Saunders, vice president, Grass Valley French Ditch Company, discussed their experience in creating a mitigation bank.

03:38:13 Sen Hamlett asked Mr. Saunders what the source of water is for its ditch. Mr. Saunders said it is the Clark Fork River.

03:38:41 Laura Ziemer, director, Trout Unlimited, gave a PowerPoint presentation on a potential water bank in the Gallatin Valley. **(Exhibit 9)**

03:42:07 Brian Heaston, project engineer, Engineering Division, City of Bozeman, discussed water needs for the Gallatin Valley.

03:44:21 Deb Stephenson, water rights consultant, said she represents a landowner interested in using their property in a collaborative effort to meet the growing water demands in the Gallatin Valley.

03:50:57 Lain Leoniak, water conservation specialist, Engineering Division, City of Bozeman, discussed the benefits of creating a water exchange for the municipality.

03:53:40 Ms. Stephenson discussed the agricultural and environmental benefits of a water bank.

Public Comment:

03:58:27 Krista Lee Evans, Association of Gallatin Agricultural Irrigators (AGAI)

04:01:44 Craig Woolard, director, Public Works, City of Bozeman

Committee Questions and Discussion:

04:03:39 Rep. Z. Brown asked Mr. Davis if the DNRC is taking any steps to change the change of use process. Mr. Davis said the DNRC is not proposing to adopt any rules or change the process at this time.

04:05:11 Rep. Z. Brown asked Mr. Davis if there are any lessons learned from doing a mitigation bank in an open basin that would apply to a closed basin. Mr. Davis said the major difference is dealing with hydrogeology rather than surface to surface water change.

04:06:59 Rep. Z. Brown asked Mr. Saunders for his suggestions in improving the change of use process.

04:09:37 Sen. Vincent asked Ms. Stephenson about the size of her client's water right. Ms. Stephenson said they have multiple, different water rights.

04:10:38 Sen. Vincent asked Ms. Ziemer how long Trout Unlimited has been working on the water banking concept. Ms. Ziemer said for about six months.

04:11:41 Sen. Vincent asked Ms. Ziemer if anyone else has shown an interest in the water exchange concept.

04:12:27 Sen. Vincent asked Ms. Ziemer if Trout Unlimited would be adverse to a canal company in the Gallatin Valley administering the water bank. Ms. Ziemer said it would not.

04:14:32 Sen. Vincent asked Ms. Ziemer if there is an opportunity to make a profit. Ms. Ziemer said over the long-term there will be a return on the investment.

04:14:53 Sen. Vincent asked Mr. Saunders what the amount of the grants were for the pilot project. Mr. Saunders said the grants totaled \$45,000.

04:15:38 Mr. Saunders gave his suggestions for water banking in the Gallatin Valley.

04:17:00 Rep. Williams asked Mr. Saunders about the portions of his district that did not want the irrigation water and what they use to irrigate with. Mr. Saunders said they are using wells.

04:17:57 Rep. Williams asked Mr. Saunders if he is aware that some ditch companies have agreements with new developments that use the irrigation water for urban irrigation.

04:18:32 Rep. Williams asked if the exempt well issue aggravated the problem. Mr. Saunders said it did.

04:18:48 Rep. Williams asked Mr. Saunders how far the service area extends that they can market water. Mr. Saunders said it extends to Noxon Dam.

04:19:35 Rep. Williams asked Mr. Davis to explain how the adverse effect process works.

04:21:38 Rep. Williams asked Ms. Evans for her suggestions on what would help AGAI feel more comfortable with the water banking concept and what the next steps should be.

04:24:51 Rep. Williams asked Ms. Leoniak what the next steps are for the city of Bozeman.

04:26:13 Rep. Glimm asked Mr. Saunders how they decide who they sell water to and how it is controlled.

04:27:32 Rep. Glimm asked Mr. Saunders if water is sold on a first-come, first-served basis. Mr. Saunders said it is, and water is only sold to a water district.

04:28:44 Mr. Saunders gave his suggestions on next steps for the Gallatin Valley.
04:29:57 Sen. Hamlet asked Mr. Saunders if mitigation water sold to an individual or homeowner's association is a permanent contract for time immemorial. Mr. Saunders said it is.

04:30:40 Sen Hamlett asked Mr. Saunders how many members are in the Grass Valley Ditch Company. Mr. Saunders said there are 132 voting members.

04:30:48 Sen. Hamlett asked Mr. Saunders about concerns that agriculture could be moved to a secondary position.

04:32:45 Sen. Hamlett asked Mr. Saunders about pressure to relocate ditches.

04:33:53 Rep. Glimm asked Mr. Woolard if there is an agreement that water will go to the City of Bozeman. Mr. Wollard said the details have not been worked out.

04:35:48 Rep. Glimm asked Mr. Woolard what would happen if someone bought all the available water. Mr. Woolard said the city would have to negotiate for water rights on a case-by-case basis.

04:37:19 Sen. Hamlett asked Mr. Woolard about estimates for population growth, the amount of water needed, and if there are plans for conservation measures.

04:39:45 Sen. Hamlett asked Mr. Wollard how much money the city has spent on water rights.

04:40:03 Sen. Hamlett asked Mr. Wollard if he is concerned about the future integrity of the watershed in the Hyalite Reservoir.

04:40:46 Sen. Vincent asked Mr. Woolard what the seepage rate is for the City of Bozeman.

04:41:45 Sen. Vincent said it will be important to watch how the water banking concept develops and moves forward in the Gallatin Valley.

04:42:17 Sen. Hamlett said the Gallatin Valley is one of the richest agricultural valleys in the world and is slowly being converted to other uses. He said it is a rural/urban issue, and that water for urban use comes from rural areas and senior water right holders.

04:45:55 Rep. Z. Brown said agricultural interests need to be considered first in order to maintain economic vibrance.

04:47:31 Rep. Williams agreed with the previous comments and the importance of looking at the relationship between water and how Montana grows.

04:48:16 Sen. Hamlett commented on changes over time, the need for growth, and water conservation.

Exempt Wells

04:49:58 Mr. Davis discussed the form used to request a reduction in a ground water certificate. **(Exhibit 10)**

04:51:59 Mr. Davis provided information on the number of subdivisions that have been reviewed since Judge Sherlock struck down the rule on exempt wells. **(Exhibit 11)**

04:54:06 Mr. Davis provided a graph from the Montana Building Industry Association showing the number of subdivisions in high growth counties and the number of lots created. **(Exhibit 12)**

04:55:19 Mr. Davis presented information on mitigation change.

Public Comment: None

Committee Questions and Discussion:

04:56:18 Rep. Glimm asked Mr. Davis if the information he provided shows the number of permits applied for. Mr. Davis said it shows the number of subdivisions that were reviewed. Rep. Glimm requested information on the number of lots that were created. Mr. Davis said he will provide the information.

Case Studies on Water Availability

04:58:42 Mr. Mohr presented a summary of the responses received on the study of water availability. [\(Exhibit 13\)](#)

05:06:35 Rep. Williams said the information can be used to look for common themes.

Public comment:

05:09:44 John Alcala, Potomac, provided information on reclaimed water. [\(Exhibit 14\)](#)

Committee Questions and Discussion:

05:17:13 Rep. Z. Brown offered to help host a WPIC meeting in Bozeman.

05:17:53 Sen. Vincent said he would like to review the information and discuss next steps at the WPIC meeting tomorrow.

05:18:57 Rep. Williams made a motion to have the WPIC review the material overnight and discuss it at the meeting tomorrow.

05:19:10 Sen. Hamlett said, without objection, the case studies will be discussed tomorrow.

05:19:18 Rep. Williams recommended making a list of common themes related to policy issues at a state or regional level.

05:20:11 Sen. Vincent asked if there is enough money in the budget for travel. Mr. Mohr said there is enough money to move an existing meeting. He said he will check if there is money for an additional meeting.

05:21:25 Sen. Vincent said if the WPIC wants to take any action it will need to be done by the meeting in September.

05:21:58 Rep. Z. Brown said if a meeting is moved to Bozeman the WPIC can also meet with the water court.

05:22:26 Sen. Stewart-Peregoy commented on the issue of subdivision growth and water availability. She said she is in favor of relocating a meeting.

05:25:26 Sen. Hamlett said the WPIC can make a decision on relocating a meeting tomorrow. He recommended leaving money in the budget for an additional meeting.

05:26:07 Sen. Vincent asked about the timetable for making decisions on draft legislation. Mr. Mohr said he would like to be working on draft legislation by May and that money budgeted for the first meeting in the next interim can be used for an additional meeting this interim.

05:27:28 Sen. Hamlett asked Mr. Mohr to provide information on adding an additional meeting and on deadlines for public comment on draft legislation.

05:28:12 Mr. Mohr provided information on the next topic.

05:29:46 Recess

06:03:43 Reconvene

SJ2 STUDY: STATE ASSUMPTION OF FEDERAL SECTION 404 PERMITTING PROGRAM

How States Assume the Permitting Program

06:04:22 Kathy Hurd, State and Tribal Wetland Program lead, Wetlands Division, EPA, gave a PowerPoint presentation on state assumption of the federal Section 404 permitting program. ([Exhibit 15](#))

Experiences in Other States

06:34:30 Eric Metz, planning and policy manager, Aquatic Resources, Oregon Department of State Lands, via phone, presented a PowerPoint presentation on the factors involved in state assumption of the 404 permitting program. ([Exhibit 16](#))

06:54:14 Michelle Hale, director, Division of Water, Alaska Department of Environmental Conservation, via phone, discussed how the 404 assumption effort has proceeded in Alaska.

Committee Questions and Discussion:

07:04:14 Sen. Vincent asked Ms. Hale about the cost for their study. Ms. Hale said the 2013 Alaska legislature gave \$1.5 million.

07:07:10 Sen. Vincent asked Ms. Hale if the WOTUS lawsuit will affect which wetlands the state of Alaska has jurisdiction over. Ms. Hale said it will.

07:09:21 Sen. Vincent asked Ms. Hurd if there is a definition of what adequate enforcement authority is and if it will be in the Attorney General's statement.

07:10:20 Sen. Vincent asked Ms. Hurd about the type of analysis that would be approved for mitigation. Ms. Hurd said regulations require looking at alternative analyses that are the least environmentally damaging.

07:12:27 Sen. Vincent asked if the state can take other considerations into effect when trying to come up with the least environmentally damaging alternative.

07:15:26 Ms. Hale said the state's program does not have to be as stringent as the U. S. Army Corps of Engineers program, but it does have to be as stringent as what is required by federal law.

07:16:45 Sen. Vincent asked Ms. Hurd about the Assumable Waters Federal Advisory Subcommittee.

07:19:16 Ms. Hale commented on working with the Corps and the EPA during the application process.

07:20:11 Rep. Williams asked Ms. Hurd if there is a way to assume only the general nationwide permit program.

07:22:00 Rep. Williams asked Ms. Hurd if the 2017 revision of nationwide permits has been drafted.

07:22:48 Rep. B. Brown asked Ms. Hurd who determines if an application has a reasonable potential for affecting federally listed species. Ms. Hurd said part of it is negotiated in the Memoranda of Agreement (MOA) between the state and the EPA.

07:24:20 Rep. B. Brown asked Ms. Hurd if an issue with a protected species will trigger a review of the application by the EPA.

07:25:02 Sen. Vincent asked Ms. Hurd if every application goes to the EPA. Ms. Hurd said the EPA only receives notice of every application.

07:25:26 Sen. Vincent asked Ms. Hurd if any of the tribes in Montana are doing their own 404 permitting program. Ms. Hurd said no tribes have assumed the program.

07:25:41 Sen. Vincent asked Ms. Hurd if the state is responsible to show through its application that it has the ability to meet a consultation threshold.

07:26:08 Sen. Hamlett asked Ms. Hurd for her opinion on what will happen with the proposed change in rule by the EPA on the definition of "Waters of the U.S." Ms. Hurd said she could not comment.

07:27:05 Sen. Hamlett asked Ms. Hurd if there is a movement to withdraw the rule. Ms. Hurd said she did not know.

07:27:27 Sen. Vincent asked Ms. Hurd about the advisory committee.

07:28:21 Sen. Vincent requested that staff be updated when recommendations are made.

07:28:41 Sen. Hamlett asked Ms. Hurd if the rule moves forward whether the Corps will be busier issuing permits in Montana. Ms. Hurd said she did not know.

07:29:13 Sen. Hamlett commented on the rule if it moves forward.

Public Comment:

07:31:09 Mr. Carter

07:33:33 Jeff Tiberi, Montana Association of Conservation Districts

07:34:42 Chris Christiaens, Montana Farmers Union

Committee Questions and Discussion:

07:36:15 Sen. Vincent asked Mr. Carter what the costs were when the CSKT looked at assuming the 404 permitting program. Mr. Carter said he will check and see what information is available.

07:37:41 Rep. Williams asked Ms. Hurd to clarify issuing 404 permits on tribal land.

07:38:58 Rep. Williams recommended that at the meeting tomorrow the committee ask Tom Livers, director, DEQ, for an update on the state's wetland program.

07:40:18 Sen. Vincent thanked Mr. Metz for his participation and asked what he anticipates the ongoing costs will be if Oregon assumes the 404 permitting program.

07:44:21 Sen. Vincent asked Mr. Metz when the state program was implemented. Mr. Metz said the program, in its current form, has been around since the early 1990's.

07:45:01 Sen. Vincent asked if there was a fiscal note attached to SB 172. Mr. Metz said he will find out.

07:46:29 Sen. Hamlett asked Ms. Hurd if the Corps will be able to handle the workload if the EPA rule moves forward and more streams are affected in Montana. Ms. Hurd said it will be.

07:48:47 Ms. Hurd said if states assume the 404 permitting program they will need to identify their objectives in order to determine what the costs will be. She said there are wetland program development grants available to help pay for the program.

07:50:54 Sen. Vincent asked about grants given to DEQ and the University of Montana.

07:51:48 Mr. Metz commented on individual objectives for each state.

07:53:43 Sen. Hamlett asked Mr. Metz if the definition of "Waters of the U.S." is changed how it will affect the 404 and 310 permitting process.

07:57:30 Sen. Hamlett asked Ms. Hurd if she was familiar with 310 permits.
07:57:58 Mr. Tiberi said 404 permits cover bigger projects. He said the conservation districts work with the Corps to develop one permit form to make it easier for landowners.
07:58:31 Sen. Hamlett asked Mr. Tiberi about the difference between a 404 and 310 permit.
07:59:52 Rep. Williams asked staff to clarify the existing jurisdiction of 310 permits. She asked if the staff present from the Corps could comment.
08:02:13 Sen. Hamlett commented on his concerns about ephemeral waters.
08:03:17 Todd Tillinger, Montana program manager, Regulatory Program, U.S. Army Corps of Engineers, discussed what is currently regulated by the Corps.
08:06:49 Rep. Williams asked Mr. Tillinger if 404 permits pertain to wetlands and 310 permits apply to streambanks.
08:08:04 Sen. Hamlett asked Mr. Tillinger if the EPA rule moves forward will the Corps be busier in Montana. Mr. Tillinger said he could not comment.
08:08:39 Sen. Hamlett said if the rule changes there will also be a change in who does the permitting. He said the WPIC needs to evaluate if it will be beneficial for Montana to start doing some of the permits.
08:09:50 Mr. Tillinger said he can provide information on how the Corps operates within Montana and on permit data.
08:10:40 Sen. Hamlett asked Mr. Tillinger if the rule stands and Montana does not assume 404 permitting will the Corps ask for help from conservation districts that have done 310 permitting.
08:12:17 Sen. Hamlett asked if the cost to society is the same whether permits are done by the state or by the Corps.
08:12:44 Sen. Vincent asked Helen Thigpen, staff attorney, Legislative Services Division, for her input. Ms. Thigpen said there are different contexts for navigability and she can provide the WPIC with copies of past legal memos.
08:14:07 Sen. Hamlett said when he refers to navigable water he is referring to the equal footing doctrine and anything that a court of competent jurisdiction has determined is navigable for commerce.
08:14:43 Mr. Tiberi said there is a meeting on January 22 at the DEQ regarding the future of the wetlands program and how it impacts different divisions within the department.
08:15:18 Sen. Vincent commented on state assumption of the Section 404 permitting program.
08:18:01 Sen. Hamlett thanked the agencies for their participation.
08:18:37 Ms. Hurd said the EPA, the Corps, and their other agency counterparts want to work with Montana. She clarified why she declined to comment on the Clean Water Rule and said the state can move forward on determining costs and the scope of water it wants to regulate.
08:20:11 Mr. Mohr asked about next steps. Sen. Hamlett said it can be discussed at the meeting tomorrow.

ADJOURNMENT

08:20:56 Sen. Hamlett adjourned the meeting at 5:23 p.m.

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