

Montana Legislative Branch

2015-16 WPIC work plan

Legislative Environmental Policy Office
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Introduction

This is the work plan for the Water Policy Interim Committee (WPIC) for the 2015-2016 interim. This document contains:

- Staff for the WPIC.
- An explanation of how the WPIC plans its work.
- A description of possible study topics and work plan tasks.
- An interim time line.

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How the WPIC Plans its Work

The WPIC was created in 2009 to study water policy. During the legislative interim, the WPIC may focus on the study topics assigned to it as well as any water policy issue. In 2015, the Montana Legislature expanded and focused WPIC duties to include oversight of issues "where the primary concern is the quality or quantity of water."

The WPIC established a work plan at the beginning of the interim.

The primary constraints limiting the agenda for the interim are the number of issues that can be effectively addressed within the available time and the resources of the committee and staff. However, the work plan is constructed with enough flexibility to accommodate relevant topics as the committee sees fit.

The adopted work plan is a road map for the 2015-2016 interim. Staff develops detailed draft work plans and timetables for each task. A time line illustrates the overall schedule and is presented at the end of this document.

Work Plan Topics

Assigned Study Resolution

The 2015 Legislature passed Senate Joint Resolution No. 2 directing an appropriate interim committee to evaluate local, state, and federal permits for waterway projects and to determine if Montana has jurisdiction to regulate activities covered by the federal Section 404 permit required by the federal Clean Water Act. On May 18, the Legislative Council assigned this study to the WPIC.

Decision: The WPIC will dedicate 0.15 FTE toward the SJ2 study. The WPIC and its staff:

- **Shall review relevant laws, policies, and legal decisions concerning state jurisdiction of Section 404 permits**
- **Shall summarize other states' assumption of Section 404 permitting**
- **Shall coordinate a panel discussion**
- **May tour a relevant site subject to Section 404 permitting**
- **May analyze relevant laws, actions, policies, legal decisions, and experiences in other states**
- **May create a work group of interested parties to suggest options.**

Statutory duties

The 2015 Legislature delegated certain new oversight duties to the WPIC. Following the passage of Senate Bill 82, the WPIC shall perform administrative rule review, draft legislation review, program evaluation (see following), and monitoring functions of these executive branch programs (5-5-231, MCA):

- Water Resources Division (Department of Natural Resources and Conservation)
- Public Water and Subdivisions Bureau (Department of Environmental Quality (DEQ))
- Water Protection Bureau (DEQ)
- Water Quality Planning Bureau (DEQ)

Broad WPIC duties are cited in 85-2-105, MCA. These include:

- Advise the Legislature on the adequacy of Montana's water policy
- Advise the Legislature on important state, regional, national, and international developments that affect Montana's water resources
- Oversee policies and activities of executive branch agencies and other state institutions that affect Montana's water resources
- Assist with interagency coordination related to water resources
- Communicate with the public about water policy and water resources
- Analyze the state water plan
- Analyze and comment on water-related research undertaken by any state agency, institution, college, or university
- Analyze, verify, and comment on the water information system provided under 90-15-305
- Report to the Legislature

Other, more-specific statutory duties of the WPIC include:

- 75-5-313, MCA, requires the DEQ to provide a summary of the status of the base numeric nutrient standards, the nutrient standards variances, and implementation of those standards and variances, including estimated economic impacts to the WPIC.
- 75-5-703, MCA, requires the DEQ to present a biennial report on progress toward developing TMDLs for impaired and threatened water bodies.

- 85-1-203, MCA, requires the DNRC to consult with the WPIC on developing, revising, or carrying out duties of the State Water Plan.
- 85-1-501, MCA, requires the DNRC to submit a biennial update the Energy and Telecommunications Interim Committee and the WPIC on studies of economic and environmental feasibility of constructing and operating a small-scale hydroelectric power generating facility on a state water project.
- 85-1-621, MCA, requires the DNRC to submit a biennial report to the WPIC that describes the status of the Renewable Resource Grant and Loan Program financed with funds from the Resource Indemnity Trust.
- 85-2-105, MCA, requires the WPIC to
- 85-2-281, MCA, requires the Water Court and the DNRC to quarterly report to the WPIC on the progress of the adjudication of claimed water rights until 2028.
- 85-2-350, MCA, requires Clark Fork River Task Force to report to the WPIC annually.
- 85-2-436, MCA, requires the FWP to submit a biennial report to the WPIC of all appropriation rights changed to an instream flow purpose in the previous two years.
- 85-20-1401, MCA, requires the DNRC to provide a periodic report to the EQC related to the U.S. Forest Service reserved water rights compact and state water reservation applications. (This report will also be submitted to the WPIC.)
- 85-2-427, MCA, requires the DNRC to report annually on the temporary leases of appropriation rights.
- SB330 requires the DNRC to summarize its reviews of state water reservations.
- Senate Bill 82 allows a project sponsor to appear before the WPIC to discuss an agency's environmental review of the project, if that environmental review is primarily concerned with the quality or quantity of water.

WPIC staff also updates two publications – *Water Rights in Montana* and *A Guide to Montana Water Quality Regulations* – to reflect any statutory changes made during the 2015 session.

Decision: The WPIC will dedicate 0.15 FTE toward statutory duties. The WPIC and its staff shall:

- **Perform all mandatory duties**
- **Track and analyze water issues identified during the 2015–16 interim**
- **Accommodate public involvement through WPIC meetings**
- **Continue basic involvement in and oversight of identified programs (Water Resources Division (DNRC), Public Water and Subdivisions Bureau (DEQ), Water Protection Bureau (DEQ), and Water Quality Planning Bureau (DEQ))**
- **Review statutorily required reports for committee review, analysis and comment**
- **Update water policy publications**
- **Prepare background papers, legal analyses, committee position letters, and legislation, as necessary to perform statutory duties**

Program evaluation

The evaluation of programs administered by the agencies for which the WPIC has oversight is required by law (5-5-231, MCA). As discussed previously, the executive branch programs under WPIC oversight are:

- Water Resources Division (Department of Natural Resources and Conservation)
- Public Water and Subdivisions Bureau (Department of Environmental Quality (DEQ))
- Water Protection Bureau (DEQ)
- Water Quality Planning Bureau (DEQ)

These bureaus each contain smaller programs, each of which is explained in the attached spreadsheet. Also attached is a flow chart for each agency that includes the breakdown of each agency.

What the WPIC evaluates depends entirely on the staff resources and Council time the committee devotes to each evaluation. This could be a review of an entire bureau or a smaller, single section of that bureau.

State law also gives the WPIC broad authority to “determine which water policy issues it examines (5-5-231, MCA).” The intent of this planning process is to not to limit the WPIC scope, but to give the WPIC a picture of the variety of programs available for statutory program evaluation and to allow for an in-depth and contextual review of a program, including applicable laws, rules, funding, and implementation.

Decision: The WPIC will dedicate 0.1 FTE toward program evaluation of executive branch program under its statutory oversight. The WPIC and its staff:

- Shall provide a summary of each executive branch program, including recent fiscal analyses, audits, and emerging issues
- Shall coordinate an overview presentation from each executive branch program
- May coordinate a panel of the regulated community
- Provide limited follow up focused on the subunits from selected executive branch programs
- *Include information that may be identified by the criteria in 5-5-215(c) (Sept. 3, 2015)*

Member Suggestions

Water issues may come before the WPIC in a number of ways, including legislation, committee member suggestions, and the work of entities that deal with water issues. These issues may come up prior to or during the interim.

Committee member suggestions drive much of the WPIC's work. Committee member suggestions submitted to staff included:

- LIDAR remote sensing technology
- Water quality conditions purer than “natural”
- Future role of the Montana Water Court
- Regulatory implications of “waters of the U.S.” definition
- Exempt groundwater wells
- Water marketing and water banking
- Development of DEQ water quality standards

- Abandonment of water right if conveyance disrupted
- Use of greywater
- Follow up on claims exempt from filing process
- Implementation of CSKT water rights settlement
- Definition of streams
- Pipeline water crossing jurisdiction
- Efficiency of irrigation and legal availability
- Water availability
- Ammonia standards
- Public notice on issues affecting water rights
- Providing water to growing communities
- Water planning
- Montana Bureau of Mines and Geology

These committee member suggestions may be covered by as little as a meeting presentation. The committee may determine other topics warrant more attention and study and may elect to assign the workload options for these topics, as demonstrated in the work plan decision matrix. The committee may also choose not to cover certain member issues.

Decision: The WPIC will dedicate 0.1 FTE toward a study of the future of the Water Court. The WPIC and its staff shall:

- Provide background information on the topic
- Coordinate presentations by agency or expert personnel
- Review relevant laws, policies, and legal decisions
- Provide relevant studies and documents related to the topic
- Coordinate panel discussion(s)
- Organize a field trip, as needed
- Include background information and discussion on
 - *The accuracy of final decrees (Sept. 3, 2015)*
 - *Appeals process for DNRC permitting decisions (Sept. 3, 2015)*
 - *Water Court review of permitting/change decisions (Sept. 3, 2015)*
 - *Distribution disputes (Sept. 3, 2015)*
 - *“Lookback period” (Sept. 3, 2015)*
 - *Input from Adjudication Advisory Committee (Sept. 3, 2015)*
 - *Revisions regarding enforceability and timing of final decrees (Sept. 3, 2015)*
 - *District court administration of decrees (Sept. 3, 2015)*

Decision: The WPIC will dedicate 0.15 FTE toward a study of water availability, water planning, water supply, and providing water for growing communities. The WPIC and its staff shall:

- Focus on the following topics (and whatever future topics the committee deems necessary):
 - Exempt groundwater wells
 - *Including discussion of the size (in acre feet) of the exemption (Sept. 3, 2015)*
 - Water marketing and water banking
 - Development of DEQ water quality standards (including those for ammonia)
 - Use of greywater
 - Efficiency of irrigation and legal availability
 - Water availability
 - Providing water to growing communities
 - *Including case studies from the four basins of a water shortage (Sept. 3, 2015)*
 - *Committee travel (Sept. 3, 2015)*
 - *Timelines for permit and change applications (Sept. 3, 2015)*
- Provide background information on relevant topics
- Coordinate agency or expert presentations on relevant topics
- Review laws, policies, legal decision on relevant topics
- Organize a field trip, as needed

Resource Allocation

There is approximately 0.8 FTE of staff time available to conduct the work identified by the WPIC. These priorities - and the amount of staff hours devoted to a specific topic - are determined by the committee using the Work Plan Decision Matrix, which accompanies this document. Please bear in mind the basic equation:



Work Plan Time Line, Meeting Calendar

Date	Tasks
June 1-2, 2015, Helena	<ul style="list-style-type: none"> ▪ Elect officers ▪ Review 2015 water legislation ▪ Agency/program overviews - DEQ, DNRC, FWP, GWIP ▪ Adjudication update (85-2-281, MCA) – DNRC, WC ▪ Update on drought and water supply ▪ Nutrient standards update (75-5-313, MCA) – DEQ ▪ Ground water studies update ▪ CSKT water rights settlement update – DNRC, LSD staff ▪ Discuss possible study issues ▪ Discuss and adopt draft work plan ▪ Adopt committee rules ▪ Review budget ▪ Adopt meeting dates ▪ Public comment
Sept. 2-3, 2015, Helena	<ul style="list-style-type: none"> ▪ Adjudication update (85-2-281, MCA) - DNRC, WC ▪ Water-related research – MBMG, others (85-2-105, MCA) ▪ Temporary leasing report (85-2-427, MCA) – DNRC ▪ Clark Fork River Basin Task Force update (85-2-350, MCA) ▪ Implementation plan for State Water Plan (85-1-203, MCA) – DNRC ▪ SJ2 study of federal Section 404 permits ▪ Water supply/fire update – DNRC ▪ Agency rulemaking update – LSD staff ▪ Study of future of Water Court ▪ Study of water availability, supply, planning, growing communities ▪ Program evaluation of identified executive branch programs ▪ Identify areas where more information is needed ▪ Revisions to work plan, if necessary ▪ Adoption of final work plan ▪ Public comment

<p>Jan. 11-12, 2016, Helena</p>	<ul style="list-style-type: none"> ▪ Adjudication update (85-2-281, MCA) - DNRC, WC ▪ Water-related research – <i>MSU climate information, MBMG canal seepage, or Montana Water Center</i> (85-2-105, MCA) ▪ Instream leasing report, (85-2-436, MCA) – FWP (<i>HB142 review</i>)* ▪ U.S. Forest Service water reservations (85-20-1401, MCA) – DNRC, USFS ▪ Review of Water Information System (85-2-105 and 90-15-305, MCA) – State Library ▪ SJ2 study of federal Section 404 permits ▪ Study of future of Water Court ▪ Study of water availability, supply, planning, growing communities ▪ Program evaluation of identified executive branch programs ▪ <i>Update on process for adjudicating Turtle Mountain Band allotment (DNRC, Water Court)</i> ▪ <i>Update on CSKT compact implementation (DNRC)</i> ▪ Agency rulemaking update – LSD staff ▪ Identify areas where more information is needed ▪ Revisions to work plan, if necessary ▪ Discussion of draft report, legislation, if necessary ▪ Public comment
<p>March 7-8, 2016, Helena</p>	<ul style="list-style-type: none"> ▪ Water-related research – <i>MBMG, others</i> (85-2-105, MCA) ▪ Renewable Resource Grant and Loan Program update, (85-1-621, MCA) – DNRC (<i>HB142 review</i>)* ▪ Agency rulemaking update ▪ SJ2 study of federal Section 404 permits ▪ Study of future of Water Court ▪ Study of water availability, supply, planning, growing communities ▪ Program evaluation of identified executive branch programs, if necessary ▪ Additional issues identified in work plan ▪ Identify areas where more information is needed ▪ Revisions to work plan, if necessary ▪ Discussion of draft report, legislation, if necessary ▪ Public comment

<p>May 2-3, 2016, Helena</p>	<ul style="list-style-type: none"> ▪ State Water Plan update, (85-1-203, MCA) – DNRC ▪ Adjudication update (85-2-281, MCA) – DNRC, WC ▪ Nutrient standards update (75-5-313, MCA) – DEQ ▪ Water-related research – MBMG, others (85-2-105, MCA) ▪ Update on drought/water supply – DNRC, FWP ▪ SJ2 study of federal Section 404 permits ▪ Agency rulemaking update ▪ Study of future of Water Court, if necessary ▪ Study of water availability, supply, planning, growing communities, if necessary ▪ Program evaluation of identified executive branch programs, if necessary ▪ Additional issues identified in work plan ▪ Identify areas where more information is needed ▪ Revisions to work plan, if necessary ▪ Discussion of draft report, legislation, if necessary ▪ Public comment
<p>July 18- 19, 2016, Helena</p>	<ul style="list-style-type: none"> ▪ Nutrient Work Group – biennial summary report (75-5-313, MCA) (<i>HB142 review</i>)* ▪ TMDL list update (75-5-703, MCA) – DEQ (<i>HB142 review</i>)* ▪ Hydroelectric potential report (85-1-501, MCA) (<i>HB142 review</i>)* ▪ Groundwater studies – GWIP ▪ Temporary leasing report (85-2-427, MCA) (<i>HB142 review</i>)* ▪ Clark Fork River Basin Task Force update (85-2-350, MCA) (<i>HB142 review</i>)* ▪ Clark Fork River Basin Steering Committee update (85-2-338, MCA) (<i>HB142 review</i>)* ▪ DNRC summary of water reservation reviews (SB330) ▪ Water and Wastewater Operators’ Advisory Council (2-15-2105, MCA) (<i>HB142 review</i>) ▪ Water Pollution Control Advisory Council (2-15-2107, MCA) (<i>HB142 review</i>) ▪ Draft report for SJ2 study of federal Section 404 permits ▪ Water supply/fire update – DNRC ▪ Agency rulemaking update ▪ Draft report for study of future of Water Court ▪ Draft report for study of water availability, supply, planning, growing communities ▪ Additional issues identified in work plan ▪ Identify areas where more information is needed ▪ Revisions to work plan, if necessary ▪ Discuss and revise draft reports, legislation ▪ Public comment

<p>Sept. 5-6, 2016 – Helena</p>	<ul style="list-style-type: none"> ▪ Adjudication update (85-2-281, MCA) – DNRC, Water Court (HB142 review)* ▪ Agency rulemaking update ▪ Additional issues identified in work plan ▪ Overview of proposed agency legislation - DNRC, DEQ, FWP ▪ Review public comment on draft report, committee legislation ▪ Revise draft reports, committee legislation, as necessary ▪ Approve proposed committee legislation ▪ Selection of committee bill sponsors ▪ Approve WPIC report ▪ Consider/propose areas of study for 2017-18 interim ▪ Public comment
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** HB142 review refers to 2011 legislation, which requires interim committees to review required reports and recommend to the Legislature retaining or eliminating these reports (5-5-215, MCA).*