



THE INTERIM

August 2012

A monthly newsletter of the Montana Legislative Branch

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The Interim, along with up-to-date information about interim committees, is also available on the Legislative Branch website at www.leg.mt.gov.

Committee Advances Accreditation, Clinical Trials Proposals

The Children, Families, Health, and Human Services Interim Committee has approved a bill to require the state to seek national accreditation of its child protective services. The action came at the committee's meeting in late June, as members began considering options for their Senate Joint Resolution 30 study of childhood trauma.

The committee also approved a bill to clarify insurance coverage of routine medical costs for patients who are taking part in cancer clinical trials.

The committee will review and act on several other proposals at its final meeting in August, including a bill to move residents out of the Montana Developmental Center and into community services by June 30, 2015. The facility in Boulder serves seriously developmentally disabled adults.

Committee Considers Actions for Trauma Study

The bill draft on accreditation for child protective services, LCCF05, was one of two SJR 30-related bill drafts that the committee considered in June. It stemmed from the committee's earlier review of concerns about the handling of child abuse and neglect investigations. Some stakeholders suggested that the Department of Public Health and Human Services be required to meet national standards of performance. The committee took public comment on LCCF05 before approving it as a committee bill for the 2013 Legislature.

Members also took a first look at LCCF04, to create an office of the ombudsman for child and family services. The ombudsman's office would review complaints about how DPHHS has handled reports of suspected child abuse and neglect. The office also could help people obtain certain information about cases and could ensure that DPHHS is performing its duties properly.

Committee members decided to amend the draft to attach the office to the Department of Justice rather than the Department of Administration, as originally drafted. In addition, they will take public comment in August on the idea of combining the proposed office with the existing office of the mental health ombudsman. The committee will review a revised draft in August before deciding whether to introduce LCCF04 as a committee bill in 2013.

The committee also looked at the state law governing release of information about child abuse and neglect investigations. Among other things, members discussed the balancing of the public's right to know and the privacy rights of the individuals named in the reports. The committee then asked for a bill draft to:

- allow some family members other than parents to obtain information about the reports; and
- require DPHHS to notify people who have reported suspected abuse or neglect that the agency has received and is processing the report.

Members will review and take public comment on the bill draft in August.

Cancer Clinical Trials Bill Moves Forward

A bill approved in 2011 led to the committee bill involving health insurance coverage during clinical trials. House Bill 615 required the state insurance commissioner to create an advisory council to look at insurance-related matters for patients in cancer clinical trials. That group recommended that Insurance Commissioner Monica Lindeen seek legislation to define routine patient costs and to require coverage of those costs when patients participate in an approved cancer clinical trial.

In March, Lindeen reported on the advisory council's work and asked the committee to authorize the bill draft. She also suggested that the bill cover both cancer clinical trials and trials for other life-threatening conditions.

The committee reviewed and took public comment on LCCF06 in June. Members approved introduction of the bill but decided to limit it to cancer clinical trials, to follow the intent of HB 615.

MDC Activities Reviewed, Legislation Requested

Finally, the committee heard from several speakers about changes that have taken place at the Montana Developmental Center in the two years since a staff member sexually assaulted a resident. MDC Director Gene Haire and other DPHHS employees stressed that the facility has taken a number of steps to improve its response to reports of abuse and reduce the chances that such incidents occur in the first place.

Haire said MDC has beefed up its clinical treatment staff. It also is providing more training to staff, so they are better prepared to meet the complex needs of residents. The majority of residents have a developmental disability and also suffer from a mental illness. All of them are at the facility because a court has found that they could not — at the time of commitment — be treated appropriately elsewhere.

Panelist Bernadette Franks-Ongoy, executive director of Disability Rights Montana, maintained that safety concerns still

exist at MDC. She also said that clients would be more appropriately served in local communities. And she asked committee members to change state law to:

- allow Disability Rights Montana to receive the monthly updates that MDC must file about reports of abuse; and
- put the MDC employee who serves as a client protection specialist under the Department of Justice rather than DPHHS.

The committee authorized drafting of legislation to make both changes. Members also asked staff to draft a bill requiring DPHHS to develop and implement a plan for moving MDC residents out of the facility and into community services by mid-2015.

The MDC-related bill drafts will be presented to the committee for review, public comment, and further action in August.

Next Meeting

The committee meets next on Aug. 20-21 in Room 137 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sue O'Connell, committee staff.

Committee Website: www.leg.mt.gov/cfhhs

Committee Staff: soconnell@mt.gov or 406-444-3597

Redistricting Commission to Hold Week-Long Review of Draft Plans

The Montana Districting and Apportionment Commission will meet Aug. 13-17 in Helena after taking the summer to consider the comments it received earlier this year on five draft legislative redistricting plans. The August meetings start at 10 a.m. on Monday, Aug. 13, in the Capitol. Meetings on subsequent days will begin at 9 a.m.

Commissioners will also meet at least twice after August. First, they will consider possible state Senate pairings on Nov. 15 in Helena. The commission will then meet in Helena on Dec. 11 for its statutorily required hearing on the entire redistricting plan, encompassing all 100 House districts and 50 Senate districts.

In early 2013, the commission will submit the final draft redistricting plan to the 63rd Legislature for its review and comment. The Legislature has 30 days to provide recommendations to the commission, which may then choose to accept all, some, or none of the recommendations. A final redistricting plan should be completed in early spring of 2013.

Commission Encourages Comments by Aug. 1

The commission continues to accept comment on its five draft plans in advance of the August meeting. To ensure that

the commissioners receive comments before the meeting, members of the public are encouraged to submit comments by **Aug. 1**. However, any comments received after that date will be provided to commissioners at the August meeting and are still part of the public record.

Comments about any plans produced at the August meeting will be provided to the commissioners, including any comments about possible state Senate pairings and on the plan itself.

Written comments may be sent by regular mail to: Districting and Apportionment Commission, Legislative Services Division, P.O. Box 201706, Helena, MT 59620-1706. Comments also may be sent by e-mail to districting@mt.gov or by fax to 406-444-3036.

To stay up-to-date on future commission activities and meetings, sign up to receive e-mail updates by clicking “Sign up for Electronic Notices of Committee Activities” on the commission’s website.

More information about the commission’s activities and upcoming meetings is available on the commission’s website or by contacting Rachel Weiss, commission staff.

Commission Website: www.leg.mt.gov/districting
Commission Staff: rweiss@mt.gov or 406-444-5367

EAIC Subcommittee on Rural Volunteer Firefighters to Meet

A subcommittee of the Economic Affairs Interim Committee will meet Aug. 23 in Helena to review a bill draft that would make workers’ compensation mandatory for all volunteer firefighters but also provide a way to finance the premiums. The meeting will start at 9 a.m. in Room 137 of the Capitol.

Sen. Tom Facey proposed a bill draft to meet concerns from the Montana Association of Counties and the Department of Natural Resources and Conservation regarding agreements routinely signed by county commissioners to obtain firefighting equipment from DNRC. Those agreements contain a statement that firefighters operating the equipment have workers’ compensation insurance. Although some volunteer fire departments do provide volunteers with workers’ compensation coverage, representatives of various volunteer firefighting units have acknowledged that not all do so. In addition, not all volunteer firefighters operate as part of an entity that has taxing authority. The proposed bill draft would require that county commissioners work with fire districts, fire service areas, and others who provide fire protection to determine financing options for workers’ comp coverage. The counties, in turn, would be allowed to assess a permis-

sive levy to cover the costs of workers’ compensation for those providers.

The bill is to be presented to the final meeting of the Economic Affairs Committee on Sept. 11. More information related to the rural volunteer firefighters and workers’ compensation bill is available at the committee website. Click on the word “Subcommittee” under the Meetings heading for Aug. 23. The public is invited to attend the subcommittee meeting, and public comment will be accepted.

For more information on the activities and meetings of the committee or subcommittee, visit the committee’s website or contact Pat Murdo, committee staff.

Committee Website: www.leg.mt.gov/eaic
Committee Staff: pmurdo@mt.gov or 406-444-3594

ELG Continues Review of Subdivision Exemptions, Education Standards

The Education and Local Government Interim Committee covered a wide range of topics at its June meeting and made several final decisions on forwarding legislation and recommendations to the 2013 Legislature. The committee has completed or is nearing completion of its assigned studies, statutory duties, and work plan items.

Proposals Presented on Subdivision Exemptions

A working group facilitated by the Department of Commerce’s Community Technical Assistance Program met several times during the interim to develop recommendations for dealing with state laws that exempt certain subdivisions from review. The work was done for the study authorized by House Joint Resolution 39, which directed that the review look in particular at exemptions for sale, rent, or lease and at subdivisions created by rent or lease. CTAP and committee staff reviewed the items that HJR 39 requested be studied and how those portions of the study were completed. They also summarized the working group process and the group’s discussions. Although consensus was not reached on a single bill or package of bills for the committee’s consideration, the group did offer five bill drafts. Each draft contained components favored by many of the working group members, who provided testimony and highlighted the portions of the bills that they or the organizations they represented could support.

After hearing the testimony and discussing the options, the committee’s presiding officer, Rep. Elsie Arntzen, asked Rep. Matt Rosendale and Sen. Tom Facey to work with staff before the September meeting to develop a single bill that incorporates as many of the agreed-upon items as possible.

HB 142 Review Winds Up

The committee completed its statutory responsibility of reviewing advisory councils and required reports. State law establishes four advisory councils that are attached to education agencies and requires eight reports that are relevant to ELG's subject-area jurisdiction. The committee approved a bill draft to eliminate the Student Loan Advisory Council. The draft was requested at the committee's March meeting and endorsed by the Office of the Commissioner of Higher Education. OCHE representatives told the committee that the council had outlived its usefulness because of changes in lending practices and in available lenders. They also said that a Board of Regents task force is reviewing the most important associated issue — affordability of postsecondary education. The committee recommended retention of the other three advisory councils: the Certification Standards and Practices Advisory Council, attached to the Board of Public Education; the Governor's Postsecondary Scholarship Advisory Council, attached to OCHE; and the Fire Services Training School Advisory Council, appointed by the Board of Regents.

The committee voted to request a bill that would eliminate statutory references to three reports required of the Office of Public Instruction. Two of the reports, an At-Risk Students report and an American Indian Achievement Gap report, were intended to be made only one time on or before Sept. 15, 2010. The other, a biennial report of the Superintendent of Public Instruction, must be provided only "if considered necessary." Committee members said they thought the discretionary language was superfluous and acknowledged the large amount of information and numerous reports the Office of Public Instruction already provides on its website and to the Legislature and other entities.

Action Taken on Education Items

The committee reviewed the K-12, K-20, and Montana University System Shared Policy Goals and Accountability Measures documents that it developed last interim. The committee voted to reauthorize their signing, as well as recommend that the committee revisit the documents in more detail during the summer of 2013.

At ELG's March meeting, Sen. Bob Hawks requested, with the committee's concurrence, that staff draft a bill for review in June amending the requirement that five specific counties levy 1.5 mills for vocational-technical education. The levy is required under 20-25-439, MCA, which directs the money to the general fund. Sen. Hawks proposed that any county in which a two-year unit of the university system or two-year program is located be required to levy 1.5 mills, with the money directed to the Board of Regents for disbursement back to the two-year programs. There would be no change

for property taxpayers in Cascade, Lewis and Clark, Missoula, Silver Bow, and Yellowstone counties, where the levy is already applied. Expanding the provision to any county in which a two-year program is located would extend the levy to four additional counties: Hill, Ravalli, Beaverhead, and Gallatin. ELG discussed the draft among its membership and with Commissioner of Higher Education Clayton Christian, but deferred action until the September meeting.

An education policy specialist with the National Conference of State Legislatures presented information on how states are putting the Common Core education standards into place and discussed some of the funding and policy challenges states are facing with the new curricula. Legislative Fiscal Division staff reviewed the process they have followed in estimating the costs to Montana of implementing Common Core as required by law. The committee has monitored development of the Common Core cost estimates and has requested an analysis and cost estimates for the Chapter 55 Accreditation Standards, which are also approaching the implementation phase. A preliminary report on those estimates will be available at the committee's September meeting.

Next Meeting

The committee's final meeting of the 2011-2012 interim is scheduled for Thursday and Friday, Sept. 13-14, in room 152 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Leanne Kurtz, committee staff.

Committee Website: www.leg.mt.gov/elgic

Committee Staff: lkurtz@mt.gov or 406-444-3593

ETIC Acts on Coal Trains, Electric Co-ops

The Energy and Telecommunications Interim Committee is moving forward with legislative proposals related to rural electric cooperatives and Montana's renewable portfolio standard. The committee also is weighing in on the debate about the potential for increased coal train traffic in Montana.

The ETIC met July 16-17 in Billings. On July 17, it hosted a discussion on the potential of increased coal train traffic in Montana. U.S. coal producers and suppliers are examining opportunities to increase coal production from mines in the Powder River Basin in Montana and Wyoming. That coal would be shipped by train to coal export terminals in British Columbia, Washington, and Oregon. There has been a growing demand for coal shipments to Asian markets. Nine new coal export terminals in the Pacific Northwest have been discussed, and two are moving forward in the permitting process.

Missoula City Commissioner Dave Strohmaier and Yellowstone County Commissioner John Ostlund shared their thoughts on the potential increase in rail traffic. In May, the Missoula City Council adopted a resolution asking the U.S. Army Corps of Engineers to conduct a “programmatic environmental impact statement” on the cumulative effects of air pollutants, traffic delays, coal dust, and noise pollution related to the construction of ports for coal exports and the associated train traffic. In June, the Yellowstone County Commission adopted a resolution declaring its support for coal and coal-based power and the expansion of ports along the West Coast to accommodate sales of Montana coal to Pacific Rim nations.



ETIC touring the Corette coal-fired power plant, Billings, MT

After accepting lengthy public comment, the committee voted to send a letter to the U.S. Army Corps of Engineers supporting an increase in the export of U.S. coal. ETIC Chairman Alan Olson said the letter will encourage the Corps to prepare individual, site-specific environmental analyses for the export terminal proposals and will indicate that a programmatic environmental impact statement is inappropriate. The committee also will send a letter to Montana Rail Link and BNSF Railway Co. requesting the companies examine opportunities for reopening abandoned rail lines through Butte and rerouting proposed rail traffic through the community.

Bill Drafts Under Consideration

The ETIC continued its discussion of the Southern Montana Electric Generation and Transmission Cooperative Inc. and its recent bankruptcy and reorganization. The committee is moving forward with legislation that imposes voting requirements on rural electric cooperatives prior to making certain decisions. The draft bill requires the approval of a two-thirds majority of the distribution cooperative members of a generation and transmission (G&T) cooperative before the G&T can construct certain facilities or enter into certain contracts.

The committee in July also agreed that two-thirds, rather than a majority, of the distribution cooperative’s board of trustees should vote. The bill will again be circulated for public comment and come back to the committee in September.

The committee also is bringing back a proposal to expand the definition of “eligible renewable resource” in Montana’s renewable portfolio standards (RPS) to include hydroelectric project expansions. The ETIC brought a similar proposal before the 2011 Legislature. The bill was approved by the Legislature but vetoed by the governor. The committee asked that the bill be redrafted and put out for public comment in advance of the September meeting.

Agency Legislation Reviewed

During the two-day meeting, the committee also reviewed the Public Service Commission’s proposed legislation for the 2013 session. The PSC brought forward proposals to:

- update motor carrier regulations and remove language that is no longer applicable due to federal pre-emption of state authority;
- revise various provisions of Montana’s RPS statutes for housekeeping purposes; and
- add a new requirement that subdivision developers provide the Department of Environmental Quality with evidence that they have contacted the PSC about plans for the administration and potential disposition of proposed subdivision water and wastewater systems.

The committee approved the motor carrier and RPS clean-up proposals for drafting. Members declined to ask that the proposal for the new subdivision requirement concerning water and wastewater systems be drafted for preintroduction in the 2013 Legislature.

While in Billings, the committee also visited PPL Montana’s J.E. Corette Facility, the Phillips 66 Refinery, and the Sanjel Training facility. The J.E. Corette Facility is a coal-fired plant. The Phillips 66 Billings is a petroleum refinery, and the Sanjel training and maintenance facility is used to train Sanjel Corp. crews how to repair and operate equipment used in oil operations.

The ETIC next meets Sept. 7 in Helena. For more information on the committee’s activities and upcoming meeting, visit the committee’s website or contact Sonja Nowakowski, committee staff.

Committee Website: www.leg.mt.gov/etic

Committee Staff: snowakowski@mt.gov or 406-444-3078

EQC Sends Out Five Committee Bill Drafts for Public Comment

The Environmental Quality Council is moving forward with five committee bill drafts by holding a formal, 30-day public comment period before deciding in September whether to send the bills to the 2013 Legislature for consideration.

The comment period for the following bill drafts runs from July 24 through 5 p.m. on Aug. 22:

- LC 9000, which would create a state parks and recreation board separate from the current Fish, Wildlife, and Parks Commission to oversee and govern the state parks system and boating, off-highway vehicle, and snowmobile regulation and grant programs;
- LC 9010, which requests further study by a 2013-2014 interim committee of the Montana Heritage Preservation and Development Commission and its administration of Virginia City, Nevada City, and Reeder's Alley in Helena;
- LC 9020, which would eliminate the requirement that the Department of Natural Resources and Conservation submit a progress report for the designation of wildland-urban interface parcels;
- LC 9021, which would eliminate the Air Pollution Advisory Control Council and its functions; and
- LC 9022, which would eliminate the Alternative Livestock Advisory Council.

LC 9000 and LC 9010 grew out of the EQC's House Joint Resolution 32 study of state parks, outdoor recreation, and heritage resource programs. Comments regarding those bill drafts may be e-mailed to hstockwell@mt.gov.

LC 9020, LC 9021, and LC 9022 grew out of the EQC's review of statutorily required agency reports and statutorily established advisory councils. The review was required by House Bill 142, which was approved by the 2011 Legislature. Comments regarding those bill drafts may be e-mailed to jmohr2@mt.gov.

The EQC is also seeking comment through Aug. 22 on the following draft reports that summarize the council's work in the 2011-2012 interim:

- HJR 32, a study of state parks, outdoor recreation, and heritage resource programs. Comments may be e-mailed to hstockwell@mt.gov.
- Public Uses and Eminent Domain, a review of Montana's eminent domain laws, public uses, and the entities with condemnation authority. Comments may be sent to snowakowski@mt.gov.

All of the bill drafts and draft study reports are available on the EQC's website.

Public comment received by Aug. 22 will be compiled for review by EQC members in advance of their Sept. 12-13 meeting in Room 172 of the Capitol in Helena. The public is also welcome to attend the September meeting and provide comments in person. The agenda will be posted on the EQC's website at least 10 days in advance.

Agency Legislative Requests

In other business at its July meeting, the EQC reviewed and approved several legislative proposals from DNRC and the Department of Environmental Quality for early drafting in advance of the 2013 Legislature.

The DEQ bills approved for drafting would:

- make general housekeeping revisions to the Strip and Underground Mine Reclamation Act;
- revise the Montana Underground Storage Tank Act to provide that underground pipes at oil refineries that are under corrective action orders pursuant to the Montana Hazardous Waste Act are exempt from regulation under the Underground Storage Tank Act; and
- require permits for cooling water intake structures.

The DNRC bills approved for drafting involve:

- Water Use Act cleanup;
- the title of the Drought Advisory Committee;
- temporary leasing of water rights;
- a regional water system rate process;
- Ft. Belknap water compact funding;
- water compacts for the Charles M. Russell National Wildlife Refuge and Upper Missouri Breaks National Monument; and
- authority for DNRC to use water rights enforcement penalties for enforcement work.

Agency descriptions for the proposed bill drafts are available on the EQC website.

For more information on the council's activities and upcoming meeting, visit the council's website or contact staffers Joe Kolman or Hope Stockwell.

Council Website: www.leg.mt.gov/eqc

Council Staff: jkolman@mt.gov or 406-444-3747

hstockwell@mt.gov or 406-444-9280

LJIC Approves Restorative Justice, Suicide Prevention Proposals

The Law and Justice Interim Committee has approved several pieces of committee legislation for introduction in the 2013 Legislature. At its meeting in late June, the committee signed off on two bills related to suicide prevention and three bills related to its Senate Joint Resolution 29 study of restorative justice.

The action on the restorative justice bills came after the committee heard from a panel of speakers who were asked to discuss the draft legislation. They identified potential problems with the drafts and either suggested revisions or recommended that the committee take no further action on the proposals. Panelists were Brooke Marshall, executive director of the Montana Board of Crime Control; City Judge Michelle Snowberger, representing the judicial branch; Diana Koch, an attorney for the Department of Corrections; John Ward, a member of the Board of Pardons and Parole; and Barb Rainey, who represented community-based programs.

The committee approved three of the four bill drafts under consideration:

- LClj5A, authorizing judges to require restorative justice program participation as a condition of a deferred or suspended sentence;
- LClj5B, establishing a restorative justice grant program under the Montana Board of Crime Control; and
- LClj5C, requiring the Montana Department of Corrections to establish victim impact panels as part of the cognitive-behavioral treatment programming for prison inmates.

The committee discussed but did not proceed in June with LClj5D, which provided for a re-entry task force and re-entry court pilot project for offenders being released from prison and returning to Montana communities.

Suicide Prevention Bills Discussed, Two Endorsed

A panel of speakers also discussed suicides among jail and prison inmates and ways to prevent such suicides. Panelists spoke in general about mental health options in jail facilities and gave their perspectives on three bill drafts under consideration by the committee. Panelists were Brooke Marshall of the Montana Board of Crime Control; Yellowstone County Sheriff's Capt. Dennis McCave, representing the Montana Sheriffs and Peace Officers Association; and Bowman Smelko, a Helena psychologist.

The committee subsequently agreed to proceed with two bill drafts: LClj2A, to require the Department of Public Health and Human Services to establish a suicide prevention pro-

gram in detention centers, and LClj03, requiring the Montana Law Enforcement Academy to develop a suicide prevention training course for use in detention centers and creating a special revenue account to help fund suicide prevention efforts.

The committee did not proceed with LClj01, which would have established and funded a DPHHS pilot project for suicide prevention in detention centers.

HB 142 Review Results in Recommendations

Committee members also continued their House Bill 142 review of statutory advisory councils and reports for agencies under the LJIC's purview. They recommended:

- eliminating the DOC's annual report on the health costs of medical parolees and a report that was required but never completed regarding expenditures of attorney license revenues;
- statutorily creating a Corrections Advisory Council; and
- retaining the District Court Council, the Judicial Standards Commission report, the Judicial Branch Information Technology report, the Juvenile Delinquency Program report, and the annual report of the Office of the Public Defender and Public Defender Commission

Meeting Touches on Additional Topics

During its two-day meeting, the committee also:

- heard from Richard E. "Fritz" Gillespie, chairman of the Public Defender Commission. He briefed the committee on the commission's response regarding questions from or assertions by the American University Report or the American Civil Liberties Union's study of public defense in Montana. The commission took issue with a variety of statements, findings, and conclusions aired in the American University report or in the ACLU's study and agreed with others.
- reviewed and discussed a bill draft requested by Sen. Greg Hinkle to eliminate the requirement that applicants for concealed weapon permits provide their Social Security numbers. After extensive discussion, the committee was unable to agree on whether to amend or authorize the introduction of LClj06.
- reviewed proposals for agency legislation and authorized all but one proposal for early drafting and introduction in the 2013 Legislature. Members approved nine proposals of the Office of the Public Defender, five Department of Corrections proposals, one Board of Crime Control proposal, and 10 Department of Justice proposals. However, the committee did not authorize drafting of a DOJ proposal to revise Montana's Sexual and Violent

Offender Act to comport with the federal Sex Offender Registration and Notification Act.

- heard public testimony involving the Department of Corrections and Board of Pardons and Parole; and
- continued its discussion of law enforcement issues in Lake County. Frank Bowen, a game warden with the Montana Department of Fish, Wildlife, and Parks, testified under subpoena from the committee, after having been precluded by his superiors from testifying voluntarily at an earlier meeting. Bowen provided information on problems he said he had personally observed and encountered with various law enforcement agencies and officers in Lake County in the past several years. Sen. Jim Shockley, presiding officer, then asked for comment from Ben Ternes, executive director of the Public Safety Officers Standards & Training Council. Ternes outlined the need for POST to have additional statutory investigatory authority and asked the committee to authorize draft legislation designating POST as a law enforcement agency. The designation would allow POST officials to conduct investigations. The committee approved his request.

Next Meeting

The committee will meet next on Thursday and Friday, Sept. 6-7, in Room 102 of the Capitol in Helena. Agenda items include a report from The Innocence Project, testimony on the disqualification of judges and on the revised rules proposed by the Montana Supreme Court, and revisiting LClj06, the bill draft regarding concealed weapon permits.

For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Dave Bohyer, committee staff.

Committee Website: www.leg.mt.gov/ljic

Committee Staff: dbohyer@mt.gov or 406-444-3592

Council to Review Branch Budget This Month

The Legislative Council will meet Aug. 24 to approve the preliminary Legislative Branch budget for the 2014-2015 biennium for submittal to the Office of Budget and Program Planning. The council also will consider additional topics related to the upcoming legislative session and will decide whether to request any committee legislation. The Rules Subcommittee will meet to adopt draft bills to forward to the House and Senate Rules committees, which will meet Dec. 3.

Materials for the 2013 Legislature are posted under the Sessions link on the legislative website, www.leg.mt.gov. Select "2013" from the drop-down menu under the Sessions link. The tentative 2013 session calendar and a list of current bill draft requests are posted, along with the dates for caucuses,

orientation, and continuing education sessions. Caucuses are scheduled for Nov. 14 and orientation will continue through Nov. 16. The first day of session is Monday, Jan. 7, 2013.

For more information on the council's activities and upcoming meeting, visit the council's website or contact Legislative Services Executive Director Susan Byorth Fox.

Council Website: www.leg.mt.gov/legcouncil

Council Staff: sfox@mt.gov or 406-444-3066

Finance Panel to Discuss Budget Strategies, State Pay in September

The Legislative Finance Committee is scheduled to meet Sept. 27-28 in Helena. The agenda includes updates on analysis of budget strategies for addressing volatility, analysis of state pay comparisons, continuing education on school funding, review of committee bill drafts, and an overview of the agency information technology strategic plans.

Earlier this summer, the committee met in conjunction with the State Administration and Veterans' Affairs Interim Committee to review matters related to the state's pension systems. The report of that meeting can be found in the SAVA article.

Also in June, the committee received the first Legislative Fiscal Division report on the outlook for the 2015 budget. The report can be found on the legislative website, www.leg.mt.gov. Select the Fiscal tab at the top of the page. Click on Publications on the subsequent page, where a link to the "Big Picture" report is found under "Our Favorite Publications."

For more information on the committee and its upcoming meeting, visit the committee's website or contact Legislative Fiscal Analyst Amy Carlson.

Committee Website: www.leg.mt.gov/lfc

Committee Staff: acarlson@mt.gov or 406-444-2988

RTIC Wraps Up Interim Studies, Requests Two Bill Drafts

The Revenue and Transportation Interim Committee requested bill drafts related to property tax exemptions and property tax reappraisal when it met July 19-20 in Helena.

As part of its Senate Joint Resolution 23 study of tax exemptions for nonprofit organizations, the committee asked for a bill draft requiring the Department of Revenue to review the exempt status of nonprofits with property tax exemptions. The department also would be required to make available a

list of exempt properties. The committee will review the bill draft at its September meeting.

The committee also asked staff to draft a bill to replace the current 6-year appraisal cycle for class 3, 4, and 10 property with one 2-year cycle, to then be followed by annual reappraisal. That bill draft also will be reviewed in September.

The committee reviewed and approved final report summaries for the SJR 23 study and the House Joint Resolution 13 study of the individual income tax.

With the presentation of several items for the Senate Joint Resolution 17 study of centrally assessed and industrial property, the committee completed the items in the study plan. For the industrial property portion of the study, the committee received a briefing on large industrial property taxation, an overview of trends in valuation and property taxes paid, and a discussion of the taxation of oil refineries. The committee also heard two perspectives on centrally assessed property valuation. Kristen Juras, a law professor with the University of Montana, presented her report on centrally assessed property, "A Comparative Study of Montana's Centrally Assessed Property Taxation Statutes and Methodology." Certified appraiser Brent Eyre provided information on the unit valuation method. The presentations concluded with a staff briefing on the appeals process for centrally assessed property in Montana and a sampling of other states. The committee did not take any action related to the study.

Department of Transportation Director Tim Reardon presented reports required by state law on the refund of taxes paid on biodiesel, impacts on the state special revenue fund from the authority to inspect diesel-powered vehicles to determine compliance with the special fuels use tax, and a gasoline tax agreement negotiated between the State of Montana and the Confederated Salish and Kootenai Tribes. Reardon also gave an update on the federal highway legislation signed July 6. The bill includes a slight increase in funding over current levels and funds projects for 27 months.

The committee also considered the department's request for an agency bill to allow use of the Construction Manager/General Contractor Contracting Method, which engages the construction manager's expertise early in the design process to enhance constructability, manage risk, and facilitate concurrent execution of design and construction without the owner giving up control of the design details. The committee deferred action on the draft request until the September meeting.

The Department of Revenue also presented the committee with some required reports. Economist Eric Dale reported on the biodiesel blending and storage credit, while Director Dan Bucks provided an update on countries that may be

considered tax havens. He recommended adding Hong Kong, Ireland, the Netherlands, Singapore, and Switzerland to the list. Wayne State University law professor Michael J. McIntyre also discussed apportioning income of multinational corporations, and Jean-Paul Senninger, Luxembourg's ambassador to the United States, disputed that country's inclusion in the list of tax havens. The department requested an agency bill draft to make the tax haven changes recommended by the department, but the committee deferred action until September.

The committee heard and approved the following Department of Revenue proposals as agency bills to be drafted in advance of the 2013 Legislature:

- improve the transparency of property tax administration with a 2-year revaluation/reappraisal for property classes 3, 4, and 10 (replacing the 6-year reappraisal cycle);
- allow for electronic service of notices of levy and writs of execution;
- allow for recording the notice of a state tax lien with the Secretary of State's Office;
- address disclosure issues for married taxpayers filing separately on the same form;
- eliminate errors in the calculation of taxes, fees, and assessments to the local government;
- provide equal treatment of licensees under the liquor control penalty statute;
- clarify existing agency liquor store laws;
- allow de minimus refund of abandoned property on closed estates; and
- clarify the distribution of in-state lodging taxes paid by state agencies.

The department also requested five other agency bill drafts. However, the committee decided to gather more information on those proposals and consider them in September.

The next Revenue and Transportation Interim Committee meeting will be Sept. 13-14, in Room 137 of the Capitol in Helena. For more information about the committee and the upcoming meeting, visit the committee's website or contact Megan Moore, committee staff.

Committee Website: www.leg.mt.gov/rtic

Committee Staff: memoore@mt.gov or 406-444-4496

Efficiency Committee Hears Rural Concerns

The Select Committee on Efficiency in Government met in Havre in June, approving three committee bill drafts and con-

tinuing its efforts to gather ideas from local officials about ways to improve state government.

During its two-day meeting, the committee heard from area officials on several topics.

Rep. Scott Reichner moderated a panel on “Local Interests and State Government Efficiency Intersects.” In general, the speakers advocated enhanced communication from state agencies with local governmental entities, contractors, and vendors. They also suggested additional state funding should be authorized for local projects or as reimbursement to contractors and vendors. Panelists were: Paul Tuss, executive director of the Bear Paw Development Corp.; Hill County Commissioner Kathy Bessette; Havre Mayor Tim Solomon; David C. Henry, President/CEO of Northern Montana Health Care; and Mary Heller, general manager of the North Central Regional Water System.

Rep. Galen Hollenbaugh moderated a second panel, “Higher Education and Public Utilities and State Government Efficiency Intersects.” Montana State University-Northern Chancellor James Limbaugh and Rick Stevens, general manager of Triangle Communications and Hill County Electric Cooperative, spoke to the benefits and challenges of collaborating with various state agencies and the Legislature.

The final invited witnesses discussed the situations and challenges confronted by two rural health care providers. Cindy Ellison, executive director of Richland Opportunities Inc., said that Medicaid reimbursement rates essentially remain at the rates paid five years ago, even though the cost for items in Richland County has skyrocketed since production began in the Bakken oil and gas fields. Similarly, Liberty Medical Center CEO Ron Gleason recounted how the Chester facility came to grips with increased service demands and waning financial resources. For example, the center was forced to close its nursing home because keeping it open was too costly. As a result, the nursing home’s residents were moved elsewhere.

Committee Approves Technology-Related Bill Drafts

Also at the meeting, committee members reviewed drafts of three pieces of legislation they had requested earlier in the interim. The committee approved the bill drafts for introduction in 2013, meaning the next Legislature will consider:

- LCSC20, to clarify the term “at the office” for local governments in the context of accessibility to electronic records;
- LCSC21, to study electronic records management; and
- LCSC22, to revise certain requirements regarding the notarization of documents.

Medicaid Mental Health Payment Issue Reviewed Again

The committee heard again from a proponent for changing the manner in which the Montana Medicaid program pays for certain mental health services. John Lynn of the Western Montana Mental Health Center asked the committee to revisit its earlier decision against changing the reimbursement system for two specific services that require providers to bill for their time in 15-minute increments. Members said they would reconsider the idea if Lynn and other providers presented a more well-defined proposal before the committee’s final meeting in September.

The committee is scheduled to meet next on Monday and Tuesday, Sept. 10-11, in Room 102 of the Capitol in Helena. Agenda items include the final report from the Information Technology Subcommittee and action by the full committee on IT issues, as well as review of a draft final report on the committee’s body of work.

For more information on the committee’s activities and upcoming meeting, visit the committee’s website or contact Dave Bohyer, committee staff.

Committee Website: www.leg.mt.gov/sceg

Committee Staff: dbohyer@mt.gov or 406-444-3592

State Administration Committee to Continue Pension Review

The State Administration and Veterans’ Affairs Interim Committee will meet Aug. 8-9 in Helena to wrap up much of its work before holding a final pension-related meeting in November.

At its August meeting, the committee will develop recommendations about whether to retain or eliminate certain advisory councils or reports as directed by House Bill 142, which was approved by the 2011 Legislature. The committee also will allow further comment on proposed legislation affecting political practices, wrap up its preview of agency bill draft proposals, and begin pre-session screening of retirement legislation.

The committee in June examined public pension plan challenges. Montana’s public employee pension systems, like all public retirement systems, were hard hit by what has been called the 2008 world market meltdown and the ensuing recession. Five of Montana’s eight public employee retirement plans are facing funding shortfalls that, taken together, will require about \$120 million a year (not counting inflation factors) for the next 30 years to fully pay for past benefit obligations.

Meeting in a joint session with the Legislative Finance Committee, the committee in June received briefings on the actuarial assumptions used when determining the actuarial funding required for the Teachers' Retirement System. The joint committee also received a detailed report prepared by the Legislative Fiscal Division and the Legislative Services Division on the public pension challenges and a preview of legislation being developed by the retirement boards for the upcoming session.

At that time, the joint committee appointed a joint subcommittee to obtain the details of Gov. Brian Schweitzer's plan to fund the retirement systems. The governor's budget director, Dan Villa, was slated to present those details to the joint subcommittee on July 26. The committee also requested actuarial analysis of a long-term funding plan aimed at fully funding

the pension plans by about 2045. The retirement boards are determining how much the requested actuarial analysis is expected to cost.

The committee also agreed it will hold an additional meeting in November, after the FY 2012 actuarial valuations of the pension systems, to allow for better fiscal analysis of retirement legislation to be introduced during the 2013 legislative session.

For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sheri Scurr, committee staff.

Committee Website: www.leg.mt.gov/sava

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The Back Page

Water Rights Exemptions: A Long History, Uncertain Future

By Joe Kolman
Legislative Environmental Analyst

In the coming months, legislators may hear about two types of water rights that share similar characteristics and names, but raise vastly different policy questions.

Is that about as clear as high flow on the Mighty Mo?

One type of right is known as a right that is exempt from filing. The other is an exempt ground water well. Both deal with relatively small amounts of water. And both date back about four decades to the early implementation of water law in Montana as we know it today.

Existing – Not Filed

Water rights exempt from filing may be the least well known of the two issues.

The 1972 Constitution recognized and confirmed existing uses of water and directed the Legislature to “provide for the administration, control, and regulation of water rights and

shall establish a system of centralized records, in addition to the present system of local records.”

On July 1, 1973, the Water Use Act took effect. It required that water rights existing prior to that date be finalized through a statewide adjudication in state courts. The adjudication is a judicial procedure decreeing the quantity and priority date of all existing water rights in a river basin.

A 1978 report to the Legislature detailed the “painstaking” early history of adjudication in Montana¹.

To say the least, it was painfully slow.

According to the report, the Department of Natural Resources and Conservation began the process in the Yellowstone River Basin because of impending industrial uses, water supply problems, and a lack of water use documentation.

In October 1973, work began on a 4,000-square-mile area of the Powder River Basin. The state sent notices to about 1,000 landowners directing them to file claims to their water rights.

¹ Laurence J. Siroky, “Report to the Montana Legislature Interim Subcommittee on Water Rights,” Department of Natural Resources and Conservation, April 14, 1978. Available at http://courts.mt.gov/content/water/WAAcommittee/1978dnrc_leg_report.pdf

About a year later, DNRC had recorded 8,400 declarations. At the time of the legislative report, three years later, about half of the claims in that single basin made it through fact gathering and were ready for court review.

100 Years?

At one point, it was estimated that adjudication of existing rights at the original pace would take 100 years. Simply put, it would take a century to determine priority dates and how much water people were using in 1973. Such an extreme period would conflict with the goals of adjudication, which, according to the report, were:

- document current water usage for protection against demands and lawsuits by downstream states, the federal government, and other interests outside Montana;
- document existing water rights, so the DNRC may issue or deny water use permits more intelligently;
- assist water planning by providing knowledge of the amount of unappropriated waters;
- ensure holders of water use permits that water is available, in order to promote future water development and reduce the monetary risk in appropriation facilities; and
- document individually held water rights to provide more certainty in real estate transactions and the severing and selling of water rights. The documentation also was expected to allow upstream appropriators to be certain of the extent of prior rights downstream.

Speeding Up Adjudication

The report contained a number of options for dealing with the potentially lengthy adjudication process. One option involved exempting from the filing requirement both ground water domestic rights and rights for livestock drinking from a source, called stock rights. It was estimated such a measure would cut in half the projected 500,000 claims statewide. The report contemplated the exempted rights would be adjudicated at a later date.

That suggestion, along with others, was implemented in 1979. The exemption reads:

85-2-222. Exemptions. Claims for existing rights for livestock and individual as opposed to municipal domestic uses based upon instream flow or ground water sources and claims for rights in the Powder River basin included in a declaration filed pursuant to the order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, or under sections 3 and 4 of Chapter 485, Laws of 1975, are exempt from the filing require-

ments of 85-2-221(1). Such claims may, however, be voluntarily filed.

Flash forward to today. The history of quantifying water rights in existence prior to 1973 is still being written, though progress is being made. In regular reports to the Legislature, the DNRC and the Water Court report they are on track to meet goals set by the 2005 Legislature that included enforceable decrees statewide by June 2020.

Now What?

But what about those existing rights that were exempt from filing? Well, many folks heeded the last line of the law that said the claims could be voluntarily filed. They sent in about 74,000 such claims. An estimated 150,000 non-filed claims may still exist.

What does it matter? That is a question that may eventually come back to the Legislature.

On the broadest of policy levels, the goals of the adjudication as outlined in the 1970s contemplated that all rights be adjudicated. When it comes time to enforcing a water right against more recent uses, possessing a decreed water right is important. Because these claims were not filed and no way exists to file them now, they are not included in a temporary preliminary or preliminary decree.

Though the issue has not gained wide attention, a few water right holders consistently bring it up with the DNRC, the Water Court, and the Legislature. In 2011, at the request of Sen. John Brenden, R-Scobey, Chief Water Judge Bruce Loble convened the Water Adjudication Advisory Committee to tackle the problem.

Among some of those most intimate with the adjudication, concern exists about any proposal that would further delay the process. Though the exempt rights are not included in the decree, it is debatable how effectively the exempt rights would be regulated even if they were because the domestic claims are for relatively small amounts of water and the stock claims involve regulating the roaming habits of livestock.

The advisory committee, consisting of water attorneys and water users, has met several times over the interim and in September will present legislation to the Water Policy Interim Committee that would establish a voluntary filing option. Under that proposal, petitions could be filed with the Water Court to quantify the elements of a non-filed exempt claim. Notice would be provided to all water users in the basin at the expense of the petitioning water user. The petitioner would bear the burden of proof. After the Water Court quantifies the claim, it would be included in the basin decree and be subject to regulation by any appointed water commissioner. Petitions would be allowed until final decrees are

issued. All exempt claims for which a petition is not filed would remain unregulated as they are now.

More information about rights exempt from filing and the advisory committee is available on the Water Court website, <http://courts.mt.gov/water/WAAcommittee/default.mcp.x>.

Exempt from Permitting

Much better known is the issue of exempt wells.

After July 1, 1973, the Water Use Act required that those wishing to use water obtain a permit.

As in other Western states, water in Montana is distributed on a first-come, first-served basis, so new applications are analyzed for the effect on existing water users. However, the law allowed that a permit was not required for ground water appropriations of less than 100 gallons a minute for domestic, livestock, or agricultural uses.

The amount of water allowed and the rules used to implement the law have changed, but the current law and accompanying rules have been around almost two decades.

The law states that a permit is not required for a well or developed spring that diverts water at 35 gallons a minute or less and does not exceed a volume of 10 acre-feet a year. However, a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.

In recent years, legislative attempts to change the exemption, including codifying the administrative definition of combined appropriation, have failed. Challenges to the rules also have not succeeded.

Most debate in recent years centers on the use of exempt wells in residential housing developments. About two-thirds of the subdivision lots created between July 2004 and June 2011 received water from exempt wells.²

Even if each well only uses a small amount of water, some people argue that the cumulative effect is not analyzed for harm to existing water right holders to the same extent that another use that draws the same amount of water would be, such as an irrigation system. Others note that in some areas, if the effects of an exempt well are even measurable, they are so small in the larger scheme of water use as to be harmless.

Given the rural nature of Montana, some contend that an outright ban on exempt wells is unrealistic. The permitting system could be overloaded evaluating new applications. Furthermore, allowing relatively small amounts of water for domestic or stock use could be seen as an unalienable right.

But after that, options for addressing concerns about providing water for new uses, including housing, while protecting existing water right holders become more controversial.

In 2011, the Legislature passed House Bill 602, requiring a study of exempt wells. Among other things, the Legislature found that exempt wells may be adversely affecting existing water rights and that existing water law does not give the DNRC adequate direction on how to administer exempt wells.

Exempt from What?

For someone unfamiliar with Western water law, the idea that a bureaucratic permit system must be negotiated prior to using water may seem needless. If you can see water in a creek or someone assures you that cool, clean liquid is bountiful below the surface, what more does one need to know?

Quite a bit.

The actual presence of water at the time one wants to use it and in the quantity desired are just two of the criteria that must be proven before most would-be water users can appropriate the precious but reusable resource. The permitting requirements of law apply to both surface water and ground water.

The criteria for a permit in Montana are contained in 85-2-311, MCA. They include a test for physical availability, which for a ground water well entails an aquifer test supervised by a hydrogeologist or other professional, a minimum duration of pumping, an observation well, and a report that includes ground water and surface water monitoring data.

The examination of legal demands and possible adverse effects includes:

- identifying prior appropriators;
- comparing the physical water supply within the area of impact at the point of diversion during the period of diversion requested with existing legal demands;
- describing the effect on existing wells and hydraulically connected surface water; and
- demonstrating that the proposed diversion can be regulated during periods of water shortage to satisfy rights of prior appropriators.

The permitting process allows an opportunity for anyone whose property, water rights, or interests would be adversely affected to object.

Objections may be withdrawn or denied, or the approval may be conditioned to mitigate objections. The permit might be

² Department of Environmental Quality Subdivision Review Program.

granted for less water than sought in the application, or the water use may require the retirement of another water right to offset the new use. Monitoring and reporting of the water use also may be required.

None of that applies to the exemptions. A well is drilled, and the water is put to use. To obtain a certificate of water right, which includes a priority date, the water user pays the \$125 to the DNRC and provides the location, the flow rate, and the beneficial use of the well.

By the Numbers

While the effect of water use by exempt wells is not analyzed by the permitting process, the committee examined several scenarios based on well location, assumptions of actual use, and area-specific availability and allocation of ground water.

The exemption allows for a flow rate of 35 gallons a minute, not to exceed a volume of 10 acre-feet a year.³

The amount of water allowed under the exemption is sufficient for a variety of uses. Ten acre feet could quench the thirst of 500 cows for a year, keep five acres of grass green in Bozeman, sprinkle up to seven acres of pasture, serve a 150-room hotel, run a gravel operation, or supply a 10-lot subdivision in Billings.⁴

In terms of the water used in a housing development, a household of 2.5 people would divert an estimated one-third of a single acre-foot per year for in-house uses, including drinking, cleaning, and toilet operation. In Bozeman, an acre of lawn and garden could be irrigated with 2 acre-feet a year.⁵

The language in the exemption refers to the amount of water pumped out of the ground. But while the use of water is a property right that can be owned by an individual, the same water will be used by many water right holders as it cycles through each use. When it comes to debating the effect the exemption may have on existing users, the other component is the amount of water consumed.

Consumed water does not return to the system, meaning it cannot be used by other water right owners. The largest

consumptive uses are evaporation from soil and surface water bodies and transpiration, which is water used by plants.⁶

How much water is consumed depends on the use. A household that diverts one-third of an acre-foot for 2.5 people would consume just .03 acre-feet because most of the water is returned through the wastewater system. Nine out of every 10 gallons of water pumped out of the ground returns to the system. In contrast, a growing lawn consumes about 80 percent of the water put on it.⁷

On a statewide scale, using assumptions more conservative than those above, the amount of water diverted by exempt wells in closed river basins in 2010 was more than 30,000 acre-feet with the consumed volume of almost 18,000 acre-feet.⁸

But caution should be used when looking at the cumulative use of water statewide. The

Ground Water Investigation Program at the Montana Bureau of Mines and Geology examined consumptive use of exempt wells on a much smaller scale.

The percentage of consumptive use varied widely. In the lower Beaverhead River study area, exempt wells consumed just 2 percent of the water budget. In the Eightmile Creek area of Ravalli County, lawn watering accounted for more than half of the water consumed.

In small study areas, marked differences may exist in consumptive use based on an annual budget and a smaller, seasonal time-frame. The domestic use in April and May in the Eightmile study area isn't much different in early spring than overall. However, in the Four Corners study area, the consumptive use of lawns in early spring is a much greater percentage of the water budget than when it is measured annually.

In subbasin study areas in regions where the growth of exempt wells has raised concerns — including Florence, Helena, Belgrade, and Bozeman — the study found that lawn watering from exempt wells consumed 15 percent of all

³ This reflects the 1991 change in law from 100 gallons per minute with no limit on volume.

⁴ DNRC Presentation to the Water Policy Interim Committee, Sept. 13, 2011. Available at: <http://leg.mt.gov/content/Committees/Interim/2011-2012/Water-Policy/Meeting-Documents/September-2011/water-use-table.pdf>.

⁵ Ibid.

⁶ John Metesh, "Hydrogeology Related to Exempt Wells in Montana", Montana Bureau of Mines and Geology.

⁷ DNRC Presentation to the Water Policy Interim Committee, Sept. 13, 2011. Available at: <http://leg.mt.gov/content/Committees/Interim/2011-2012/Water-Policy/Meeting-Documents/September-2011/water-use-table.pdf>.

⁸ DNRC Presentation to the Water Policy Interim Committee, June 1, 2011. Number does not include stock wells. Assumes .21 acre-feet diverted for in-house use and .95 diverted for half-acre lawn. Available at: <http://leg.mt.gov/content/Committees/Interim/2011-2012/Water-Policy/Meeting-Documents/June-2011/exempt-well-statistics-dnrc.pdf>.

water not returned to the system, or just less than 5,000 acre-feet annually.

What effect, if any, the consumptive use of exempt wells may have on existing surface right holders is not analyzed. However, the DNRC presented testimony to the Water Policy Interim Committee on the legal availability of water in some of the areas studied by the Ground Water Investigation Program.

Considering that an exempt well would be a year-round use, the DNRC concluded that in the Threemile Creek Area, any depletion of surface flows by a new ground water use would affect existing demands. While water is legally available during certain times of the year in Eightmile Creek and the Bitterroot River, DNRC Water Division Administrator Tim Davis said that a year-round use of ground water that was subject to a legal availability analysis would likely need to also provide mitigation to offset effects on existing water rights.⁹

The Montana Association of Realtors in testimony before the WPIC referenced a study the association commissioned in 2008 on exempt wells. That study found that “it is difficult to conceive that there would be any practical circumstance in any closed basin in Montana where future growth in exempt wells would result in any discernible, detectable, or measurable adverse impact to any prior surface water appropriator.”¹⁰

What are the Options?

The WPIC debated several options presented by those involved in the exempt well debate, including conservationists, well drillers, the development community, and senior water right holders.

At its final meeting in September, the committee will consider proposals that would apply only in closed river basins in western Montana. One would revise the flow rate and volume of the exempt well, while also requiring larger, denser subdivisions to install public water and sewer systems. The other would allow subdivisions only one exemption of 35 gallons per minute and 10-acre feet, no matter how many lots are involved.

The bill drafts and more information about the study are available on the committee’s website, www.leg.mt.gov/water.

⁹ Testimony by Tim Davis, Water Division Administrator, Department of Natural Resources and Conservation, to the Water Policy Interim Committee, Jan. 10, 2012. Available at: <http://leg.mt.gov/content/committees/interim/2011-2012/Water-Policy/minutes/January-10-2012/Exhibit03.pdf>.

¹⁰ Testimony by Jim Day, representing the Montana Association of Realtors, to the Water Policy Interim Committee, Jan. 10, 2012. The association contracted with Nicklin Earth and Water Inc for two reports that were submitted to WPIC in 2008. The one quoted above is “Update on Evaluations Significance of Exempt Wells, Montana’s Closed Basins.” Available at: http://leg.mt.gov/content/Committees/Interim/2007_2008/water_policy/staffmemos/evaluationssignificance.pdf.

The other report is “Water Rights in Closed Basins.” Available at: http://leg.mt.gov/content/Committees/Interim/2007_2008/water_policy/staffmemos/waterrightsnicklin.pdf.

The DNRC responded to the Nicklin studies, concluding in part that the analysis only examined annual water budgets on a basin wide scale to conclude that there are no cumulative impacts from exempt wells. Available at: http://leg.mt.gov/content/Committees/Interim/2007_2008/water_policy/staffmemos/nicklinreportcomments.pdf.

Calendar of Legislative Events

All interim committee meetings are held in the Capitol in Helena unless otherwise noted.

August						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 Computer System Planning Council, Rm 102, 9 a.m.	2	3	4
5	6	7	8 State Administration & Veterans Affairs Committee, Rm 137, 9 a.m.	9 State Administration & Veterans Affairs Committee, Rm 137, 8 a.m.	10	11
12	13 Districting & Appor- tionment Commis- sion, Rm TBA, 10 a.m.	14 Districting & Appor- tionment Commis- sion, Rm TBA, 9 a.m.	15 Districting & Appor- tionment Commis- sion, Rm TBA, 9 a.m.	16 Districting & Appor- tionment Commis- sion, Rm TBA, 9 a.m.	17 Districting & Appor- tionment Commis- sion, Rm TBA, 9 a.m.	18
19	20 Children & Families Committee, Rm 137, Time TBA	21 Children & Families Committee, Rm 137, Time TBA	22	23 Economic Affairs Subcommittee on Rural Volunteer Firefighters, Rm 137, 9 a.m.	24 Legislative Council, Rm & Time TBA	25
26	27	28	29	30	31	

September						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6 Law & Justice Committee, Rm 102, Time TBA	7 Law & Justice Committee, Rm 102, time TBA Energy & Telecommunications Committee, room 172, 8 a.m. State-Tribal Relations Committee, room 137, Time TBA	8
9	10 Select Committee on Efficiency in Government , Rm 102, Time TBA Water Policy Committee, Rm 172, Time TBA	11 Select Committee on Efficiency in Government , Rm 102, Time TBA Water Policy Committee, Rm 172, Time TBA Economic Affairs Committee, Rm 137, 8:30 a.m.	12 Environmental Quality Council, Rm 172, Time TBA	13 Education & Local Government Committee, Rm 152, Time TBA Environmental Quality Council, Rm 172, Time TBA Revenue & Transportation Committee, Rm 137, Time TBA	14 Education & Local Government Committee, Rm 152, Time TBA Revenue & Transportation Committee, Rm 137, Time TBA	15
16	17	18	19	20	21	22
23	24	25	26	27 Legislative Finance Committee, Rm 102, Time TBA	28 Legislative Finance Committee, Rm 102, Time TBA	29

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