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Water Policy Interim Committee

60th Montana Legislature

SENATE MEMBERS

JIM ELLIOTT--Chair
BILL TASH--Vice Chair
LARRY JENT
GARY PERRY

HOUSE MEMBERS

SCOTT BOGGIO
JILL COHENOUR
EDWARD HILBERT
BILL MCCHESENEY

COMMITTEE STAFF

KRISTA LEE EVANS, Lead Staff
GREG PETESCH, Staff Attorney

MINUTES

Approved March 12, 2008

Date: January 15-16, 2008

Art Building
Hamilton County Fairgrounds

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.

Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities.

COMMITTEE MEMBERS PRESENT

SEN. JIM ELLIOTT, Chair
SEN. LARRY JENT
REP. SCOTT BOGGIO
REP. JILL COHENOUR
REP. EDWARD HILBERT
REP. BILL MCCHESENEY
REP. WALTER McNUTT (Wednesday only)

COMMITTEE MEMBERS ABSENT

SEN. BILL TASH, Vice Chair
SEN. GARY PERRY

STAFF PRESENT

JOE KOLMAN, Lead Staff
GREG PETESCH, Staff Attorney
CYNTHIA A. PETERSON, Committee Secretary

Visitors

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

COMMITTEE ACTION

- The WPIC approved the minutes of the October 24-25, 2008, meeting.

CALL TO ORDER AND ROLL CALL

Sen. Elliott, Chairman of the Water Policy Interim Committee (WPIC), called the meeting to order at 9:00 a.m. The secretary noted the roll ([Attachment 3](#)).

Jessica Randazzo, Hamilton City Mayor, welcomed the WPIC and visitors to Hamilton and emphasized the critical nature of water in Ravalli County.

Chairman Elliott recognized Rep. Gary MacClaren, HD 89, Victor.

AGENDA

ADMINISTRATIVE MATTERS

Minutes

Rep. Cohenour asked that the spelling of her name in the minutes be corrected and moved the minutes be approved. The motion carried unanimously by voice vote.

WPIC Budget Overview - Mr. Kolman

Chairman Elliott announced the WPIC had received an additional \$15,000 from Legislative Council. Mr. Kolman reported the WPIC has approximately \$40,000 available for the six remaining meetings, and the cost per meeting has been approximately \$6,000.

WATER MARKETING—Committee Direction

Mr. Kolman explained the enabling legislation required the WPIC to address water marketing in Montana. Water marketing, or water banking, includes the buying, selling, and leasing of water rights, as well as changes of use. Mr. Kolman stated that while HB 831 did not specifically mention water marketing, using mitigation to offset net depletion in a closed basin could include some aspect of water marketing. Mr. Kolman reported the issue of water marketing had been studied by the Environmental Quality Council (EQC) in 2004, and the study concluded that existing water marketing options in Montana were adequate. The WPIC was specifically charged to further address water marketing. Mr. Kolman requested the WPIC to consider and discuss what information it would like to consider regarding water marketing.

Chairman Elliott recognized Rep. Bob Lake, HD 88, Hamilton.

Public Comment

There was no public comment offered.

Committee Discussion

Rep. Boggio pointed out that water marketing can occur only when there is an abundance of water and, in some basins, the water is over appropriated. In areas such as the Teton River drainage, water is being stored upstream while the downstream portion is dry, and senior water users have no water.

Rep. Cohenour suggested individual counties may need to address their specific areas and water marketing could allow counties to purchase water rights and let those water rights out. Rep. Cohenour believed the counties would need to be involved in zoning and planning on behalf of the citizens in those specific areas. Rep. Cohenour would like to see the public have more control in given areas. Rep. Cohenour suggested looking at models that already have provisions in place and stated she would like to know the counties' thoughts about taking on the responsibility. Rep. Cohenour identified public health and safety issues as major concerns.

WATER RIGHT APPLICATION PROCESS

Discussion of existing water right application process, similarities, and differences in the HB 831 process, and change applications—Terri McLaughlin

Terri McLaughlin, Department of Natural Resources and Conservation (DNRC), provided a power point presentation entitled "Water Right Application Process, In and Outside Closed Basins" ([EXHIBIT 1](#)).

(Tape 1; Side B)

Applicant Perspective—Lee Wolfe, Applicant

Lee Wolfe, representing East Gate Village in East Helena, explained how East Gate Village got caught in the middle of the process. Mr. Wolfe cited confusion that existed on behalf of all the involved parties. Mr. Wolfe explained that East Gate Village had deficiencies with its application and attempted to address those deficiencies, but failed to correct the deficiencies within the allowed grace period. Mr. Wolfe stated that although the original objection process yielded no objections, that could change if East Gate Village is required to repeat its application process. Mr. Wolfe explained East Gate Village is in the process of trying to improve and obtain more water. Mr. Wolfe stated the regional office was very helpful. Mr. Wolfe believed the DNRC will need to make a big decision, and that decision may need to be tested in court. Mr. Wolfe was confident East Gate Village would be able to finish the application process. Mr. Wolfe suggested any legislation should include a grandfather provision since many applicants are in the middle of the application process.

Committee Questions

Rep. Cohenour recalled HB 831 contained a grandfather provision for those who were in the application process and asked Mr. Wolfe whether East Gate Village fell through the cracks because it missed a deadline. Mr. Wolfe acknowledged East Gate Village had to take some responsibility but suggested the dates simply fell wrong. Mr. Wolfe suggested empowering regional DNRC offices with the ability to make their own decisions. Mr. Wolfe addressed conservation and believed the regional offices should have the ability to enforce water rights.

Mr. Wolfe believed the conservation of water assists everyone, including homeowners and developers. Mr. Wolfe also believed over pumping of the aquifer is what caused water contamination in the Helena Valley.

(Tape 2; Side A)

Rep. Cohenour addressed Ms. McLaughlin and wondered how it could be possible to have a good objection process and public comment period when changes are simultaneously occurring. Rep. Cohenour wondered how an application could be changed in the middle of the process. Ms. McLaughlin responded that if during the objection period the applicant makes a change to its application, the DNRC determines whether the application has to be re-noticed, which triggers a new objection period. Ms. McLaughlin explained a change for a reduction in water would usually not prejudice either party; however, substantial changes in the application could start the process over and result in increased objections.

Rep. Cohenour wondered whether a change in the application would require re-application or re-notice. Ms. McLaughlin responded the priority date would change and the new information would be submitted into the public notice and additional time would be given to objectors.

Chairman Elliott asked whether an individual proposing to acquire a water right could be required to meet a mitigation plan. Ms. McLaughlin responded it is possible. Chairman Elliott asked if when a water right is retired, the water is actually retired or only hypothetical water is retired. Ms. McLaughlin replied historic use is ceased and the water is used for a new purpose.

Public Comment

Susan Brown has substantial experience as an objector and submitted written testimony from the objector's perspective ([EXHIBIT 2](#)). Ms. Brown also submitted a written letter of concern from Doreen Travis ([EXHIBIT 3](#)).

Myra Shults, representing the Montana Association of Counties (MACo), has been dealing with the Open Pit Mining Act and notice issues and depicted the notice requirement as inadequate. Ms. Shults believed the information is distributed mostly by word of mouth. Ms. Shults agreed with Ms. Brown that the time period for objections is too short.

(Tape 2; Side B)

Committee Discussion and Action, if any

There was no committee discussion.

HB 831 IMPLEMENTATION UPDATE—John Tubbs, DNRC

Update

Mr. Tubbs reviewed a written outline of his update ([EXHIBIT 4](#)), as well as a spreadsheet of the applications received under HB 831 ([EXHIBIT 5](#)).

Committee Questions

Rep. Cohenour requested clarification as to why the East Gate Village's application was not referenced on the spreadsheet. Mr. Tubbs explained the spreadsheet only contained HB 831 applications, and that the East Gate Village application was without a change and was caught on the cusp. Therefore, the DNRC is requesting East Gate Village to file a change application.

Policy issues, problems, or proposals

Mr. Tubbs continued reviewing Exhibit 4.

Committee Questions

There were no further questions from the WPIC.

Public Comment

Walt Hill, a Seeley Lake resident and presiding officer for the Seeley Lake Water District, explained how the Seeley Lake Water District was under substantial stress last summer due to forest fires. The citizens of Seeley Lake recently voted to upgrade its water system with sufficient storage and transmission facilities, so they can meet their customer needs and address future emergencies. Mr. Hill explained the Seeley Lake Water District has a surface water right on Seeley Lake, but is approaching its maximum right and will probably need more water. Mr. Hill addressed an oversight in HB 831 and requested an exception be implemented for municipalities in an effort to address problems in the future. Mr. Hill noted HB 831 provides exceptions for stock use and municipalities except for in the Upper Clark Fork Basin. Mr. Hill requested an amendment be made to HB 831 and the same exception for municipalities be made for the Upper Clark Fork Basin.

Ross Miller, attorney at law, provided information regarding the application for a residential well in a controlled ground water area. Mr. Miller explained that single-family residential wells are not exempt and must comply with HB 831 and obtain a permit in controlled ground water basins. Mr. Miller explained the area became a controlled ground water area because of dense development with single-family wells. Currently, applicants must have five acres and be able to prove there is no net depletion to the Bitterroot and, if there is, applicants must mitigate. This has resulted in the applicants being required to be in full compliance with HB 831 and a single-family well incurring the full-cost of compliance. Mr. Miller suggested the intention of the controlled ground water area was to limit development to one single-family dwelling per five-acre parcel. However, Mr. Miller cited a situation where a single-family dwelling on a twenty-acre parcel may not be issued a permit because of the resulting net depletion. Mr. Miller foresaw development being shut down completely in the basin if a retired water right could not be purchased.

Tracy Turek, a private water right consultant and former DNRC employee, provided comments based on her experience and research with water rights. Ms. Turek depicted water rights as confusing and complex. Ms. Turek identified the basic principle of water rights as the need to protect senior water rights and explained how new water rights can adversely affect senior rights. Ms. Turek saw a need to conduct a comprehensive review of all water right policies and

procedures since the current policies have been harmful to the very water users the laws purport to protect.

(Tape 3; Side A)

Ms. Turek believed there was a need to investigate the DNRC's role in the change process and suggested a need for the DNRC to operate by a clear set of rules and guidelines rather than making arbitrary decisions.

Committee Discussion and Action, if any

There was no committee discussion.

HB 831 CASE STUDY PROGRESS—John Metesh, Montana Bureau of Mines and Geology Case Study Site Locations and Contact Progress

Mr. Metesh gave a power point presentation update on the Montana Bureau of Mines and Geology (MBMG) ([EXHIBIT 6](#)).

Chairman Elliott recognized Rep. Ron Stoker, HD 87, Darby.

Committee Questions

There were no questions from the WPIC.

Public Comment

Ms. Brown asked whether copies of Mr. Metesh's presentation would be available to the public. Mr. Metesh stated he would provide Ms. Brown with a copy, and Mr. Kolman directed Ms. Brown to the WPIC website. Ms. Brown inquired about the case study for the Bitterroot Range. Mr. Metesh responded that there were no permit applications pending in the Bitterroot Valley when the study commenced, but there is substantial information on the Bitterroot Valley currently available.

Committee Discussion and Action, if any

There was no Committee discussion or action.

(LUNCH)

FOLLOW UP ON EXEMPT WELL ISSUES REQUESTED BY COMMITTEE AT CHOTEAU MEETING

Department of Natural Resources Numbers—John Tubbs

Mr. Tubbs submitted and reviewed "Effects of Exempt Wells on Existing Water Rights" ([EXHIBIT 7](#)).

Committee Questions

There were no questions from the WPIC.

Montana Association of Realtors Numbers—Michael Nicklin

Mr. Nicklin submitted and reviewed "Update on Evaluations Significance of Exempt Wells, Montana's Closed Basins" ([EXHIBIT 8](#)).

(Tape 3; Side B)

Committee Questions

Chairman Elliott commented that he agreed with Mr. Nicklin's long-term projection. Chairman Elliott addressed the amount of water involved and wondered whether the cumulative effect related to subdivision development, which will occur immediately, should be treated the same or differently than the irrigator. Chairman Elliott noted the two classes of appropriators are being treated differently and wondered if the net cumulative effect of one is the same as the other, why the appropriators should be treated differently. Mr. Nicklin stated he assumes that good reasoning existed at the time rules were created and thought Chairman Elliott's question was difficult to answer. Mr. Nicklin stated he could see both sides of the issue, and acknowledged there is a point *de minimus*. Mr. Nicklin added that he strives to consider all water users in the Gallatin Valley.

Rep. Cohenour acknowledged the focus of the study is on water quantity but cautioned that the quality of the water being returned should also be a concern.

Mr. Nicklin recalled his previous comments before the WPIC regarding water quality and suggested the problems with water quality are mostly a result of agricultural use rather than subdivision development.

Public Comment

Bob Sims, an owner of a cow/calf ranch in the Boulder Valley, submitted written testimony regarding the impact of exempt wells ([EXHIBIT 9](#)).

Dustin Stewart, Montana Building Association, commented on Mr. Tubbs' presentation, Exhibit 7, and disagreed with Mr. Tubbs' figures regarding the number of exempt wells in 2006. At the request of Rep. Cohenour, Mr. Tubbs provided an explanation and clarified the totals he presented were cumulative, and the number indicated the number of exempt well certificates issued in Montana since 1991.

James Rokosch, Ravalli County Commissioner, agreed with Mr. Sims' testimony and urged the WPIC to take Mr. Sims' testimony to heart.

(Tape 4; Side A)

Commissioner Rokosch explained he typically does not see subdivision proposals for 20 plus homes that intend on utilizing public water systems. Commissioner Rokosch agreed with Rep.

Cohenour's earlier comments regarding water quality and testified individual wells increase the chance of contamination. Commissioner Rokosch stated that while he believes in providing incentives, he would also like to see a balance between water right holders and the other county residents. Commissioner Rokosch testified that neither good information nor authority is available to the County Commissions that are charged with making decisions regarding subdivisions, and cited the high costs involved when decisions are challenged in court. Commissioner Rokosch urged the WPIC to consider the full ramifications the Legislature has now imposed upon local governments regarding the obligation and responsibility to safeguard the health, safety, and general welfare of county residents.

Rep. Cohenour addressed Commissioner Rokosch and explained the WPIC is seeking ways to provide incentives for community water and sewer systems and empower local governments. Rep. Cohenour inquired about Commissioner Rokosch's ability to zone and plan in Ravalli County and recalled the WPIC had heard suggestions regarding local governments assisting developers in building the necessary infrastructure to support public water and sewer systems. Commissioner Rokosch responded that Ravalli County is actively engaged in a comprehensive county-wide planning and zoning effort. Commissioner Rokosch identified land-use capability as an issue and stated Ravalli County is in the process of performing an analysis. Commissioner Rokosch explained that ground water data analysis is not available in a form that can be readily incorporated into the analysis. Commissioner Rokosch suggested that incorporated and unincorporated towns should be on the same page regarding development. Commissioner Rokosch explained that in Ravalli County there are approximately 8,000 lots that are already approved; therefore, simply addressing the issue of subdivisions will not solve the entire problem. Commissioner Rokosch believed Ravalli County's zoning efforts were going well.

PUBLIC COMMENT ON ANY MATTER NOT CONTAINED IN THIS AGENDA AND THAT IS WITHIN THE JURISDICTION OF THE WPIC

There was no further public comment offered.

WATER RESERVATION FOR DEPARTMENT OF TRANSPORTATION—Mr. Petesch

Chairman Elliott reminded the WPIC and audience that at this point the documents were for discussion purposes only.

Working Bill Draft Presentation, LC 5005

Mr. Petesch directed the WPIC to LC 5005 ([EXHIBIT 10](#)). Mr. Petesch explained the proposal would allow public agencies to make water reservations in closed basins for the purposes defined in the federal Clean Water Act. Mr. Petesch explained the difficulties the Montana Department of Transportation (MDT) experiences when it cannot get a water reservation for purposes of performing wetland mitigation in conjunction with a highway improvement project.

Committee Questions

Rep. Cohenour wondered whether the proposal could be utilized by other agencies for other purposes. Mr. Petesch responded the language would allow any public agency to make water reservations. Mr. Petesch added that there are restrictions that if you get a water reservation for the purpose of complying with the Clean Water Act, the water cannot be used for dilution to

reduce pollution or for a change of use. The same language would be added to each of the closed basin statutes. Mr. Petesch directed the WPIC to the procedure currently found in § 85-2-316, MCA.

Rep. Boggio noted the reference on page 7 to the Jefferson and Madison River Basins and was curious why those particular basins were referenced. Mr. Petesch explained that the basin closures were done on a basin-by-basin basis, so the proposal addresses basins individually. Mr. Petesch further explained that there were different conditions regarding use of water placed on the individual basins.

Public Comment

Gerald Mueller, Upper Clark Fork River Basin Steering Committee, wondered what the utility would be of granting MDT a reservation for mitigation in the Upper Clark Fork. Mr. Mueller pointed out there is no water to be appropriated in the Clark Fork Basin. Mr. Mueller believed there is not enough water to serve a water reservation in the Upper Clark Fork.

Don MacIntyre, Montana Department of Transportation, addressed Mr. Mueller's concern and stated the purpose of the reservation for wetland mitigation would be similar to the reservations of the Department of Fish, Wildlife, and Parks (FWP) and the Department of Environmental Quality (DEQ) and would be immediate. The reservation would address the situation where there is no diversion made by the MDT. The MDT needs the reservation in order to have a protectable interest required by the federal government in order to get credits for their mitigation and protect their interest from future development.

Chairman Elliott noted that the MDT would be subject to a call by a senior water right holder. Mr. MacIntyre responded there is no senior user who could make an effective call because there are no existing water users. The MDT wants the ability to keep new users from drilling wells that would dry up the wetland, and there would be no diversion.

Mr. Tubbs added the DNRC recognizes the MDT's need to comply with the 404 permitting process of the Army Corps of Engineers and is attempting to work with the MDT on an exception provision. Mr. Tubbs thought the proposed exception is too large, and that the DNRC may not be willing to agree to such a large exception.

(Tape 4; Side B)

Mr. Tubbs stated that he is not convinced the proposal is the correct path since the proposal may not have a certain outcome for the MDT.

Chairman Elliott asked Mr. Tubbs whether a senior appropriator could make a call on an instream flow reservation. Mr. Tubbs responded that generally a senior water user does not have to make a call but just diverts the water and the junior users get notice. Mr. Tubbs added that the Upper Clark Fork Basin was closed, in part, to prevent the FWP from establishing an instream flow reservation because the basin members were concerned about the FWP having the ability to object to changes.

Rep. McChesney noted the MDT's issue is large and ongoing and wanted to know why a large exception would be preferred over establishing reservations. Mr. Tubbs stated the DNRC

understood the issue and is attempting to find the most efficient way to address the problem. Mr. Tubbs identified the issue of legal availability of water and noted the DNRC may decide not to grant the reservation to the MDT anyway.

Rep. McChesney encouraged Mr. Tubbs to work with the MDT to find a viable solution.

Committee Discussion and Action, if any

There was no further committee discussion.

ADJUDICATION RELATED ISSUES—Mr. Kolman

Working bill draft presentation, LC 5008

Mr. Kolman directed the WPIC to LC 5008 ([EXHIBIT 11](#)) and explained the discussion document addresses the way the water court prioritizes its workload and directs the water court judge to give a higher priority to hearing objections to claims rather than focusing on issue remarks. The proposed language also directs the water court judge to place the highest priority on resolving all issue remarks on claims with objections regardless of whether the issue remarks are related to the objection. Issue remarks related to flow rate or volume must be resolved before any enforcement action can be taken. A preliminary decree or temporary preliminary decree can be enforced with unresolved issue remarks, as long as the issue remarks are not related to an objection to flow rate or volume. Mr. Kolman explained the water court currently has a rule stating the water court will note any point of diversion or discrepancies that might adversely affect the distribution of water before enforcement. The water court has suggested that specifically referring to flow rate or volume could result in an issue remark regarding place of use and delay the process.

Committee Questions

Sen. Jent was curious about the exemptions on page 4. Mr. Kolman responded flow rate and volume were the two things that would affect enforcement. Sen. Jent noted the proposal allows a temporary preliminary decree to be enforced prior to resolution and wondered how that proposal would mesh with other legislation proposed by Sen. Jent. Mr. Petesch thought the two proposals would work in conjunction with each other. Sen. Jent's legislation would allow administrative enforcement of water decrees, including temporary preliminary decrees. The proposal before the WPIC would allow for enforcement before resolution of issue remarks unless the issue remarks are related to the specific exemptions listed on page 4.

Public Comment

Holly Franz, PPL Montana, was not sure the discussion document was necessary and wondered if there was concern the water court had not exercised its discretion correctly. Ms. Franz was concerned about implementing cookie-cutter language that may not be adequate to address all issues. Ms. Franz recalled the suggestion had been to make a decree enforceable earlier in the process and was concerned the discussion document may have the opposite effect. Ms. Franz believed the number of acres irrigated would need to be considered to determine flow rate and volume.

Committee Discussion and Action, if any

Rep. Cohenour recalled the discussion document was an attempt to get the water court to a point where decrees would be enforceable. Rep. Cohenour was concerned that the effect of the discussion document would not meet that need. Mr. Petesch explained the discussion document has two parts: (1) for claims that have received objections, at the time the judge is resolving the objections, he would be required to deal with the issue remarks regardless of whether those issue remarks are the basis for the objections, which would result in a clean enforceable decree; and (2) a preliminary decree may not be enforced if the issues remarks are the basis for an objection and are related to flow rate and volume. Mr. Petesch believed having "and are related to flow rate and volume" would result in quicker enforceable decrees and would also require the disposal of the main issue remarks that relate to enforcement.

Ms. Franz agreed with Mr. Petesch's suggestion for the change on page 4, but stated she was still uncertain the legislation was necessary.

Mr. Kolman suggested giving the judge more discretion while still having something in statute. Mr. Kolman suggested utilizing language from the water court's rules and referencing issue remarks that might adversely affect the distribution of water.

WATER RIGHT ENFORCEMENT—Mr. Petesch

Working bill draft presentation, LC 5003

Mr. Petesch explained LC 5003 ([EXHIBIT 12](#)) would address enforcement of water rights and uses and would create an enforcement division within the DNRC. Enforcement would include utilization of water commissioners. The water commissioners would be employees of the DNRC, and would have employee benefits. Disputes between water users would be handled as contested cases in an administrative process. The water commissioners would have the same authority as they currently have to go on land and close headgates to satisfy the call of a senior appropriator. Mr. Petesch directed the WPIC to the laundry list of statutes on page 7 which contain the water compacts and reference the language "subject to enforcement by a water commissioner appointed by the court." Mr. Petesch suggested it would be more desirable to include the laundry list rather than open up all the water compacts. Mr. Petesch explained the discussion document would allow water commissioners to be on the ground to address disputes more quickly rather than going to court to request the appointment of a water commissioner. Mr. Petesch identified a fiscal impact, but stated the proposal would give water users an immediate recourse for enforcement and would give water commissioners some employment rights.

Committee Questions

Rep. Cohenour thought the discussion document was the process the WPIC thought would be appropriate after final decrees are issued.

(Tape 5; Side A)

Rep. Cohenour was curious what the future would hold for Montana without enforcement. Mr. Petesch explained there would be an enforcement mechanism; however, the mechanism would

be cumbersome and expensive. Mr. Petesch explained that water commissioners would be state employees, although some may be considered seasonal employees.

Rep. Hilbert asked whether the water commissioner positions would be new positions or reclassifications. Mr. Petesch agreed water commissioners are not currently state employees but would be classified under the proposal.

Sen. Jent stated that he envisioned having the state engineer in the Executive Branch be the head of enforcement and wondered if these individuals could be autonomous of the DNRC. Mr. Petesch suggested it would be possible to establish an office of the state engineer and have that office be attached to the DNRC for administrative purposes only.

Sen. Jent wondered if the proposal could also assign additional duties to the office of the state engineer. Mr. Petesch replied the state engineer could become the hearing examiner in contested cases. In addition, the state engineer could oversee the building of state water projects which are currently overseen by the DNRC.

Rep. Boggio asked if it would be possible to place the water commissioners under the purview of the water court. Mr. Petesch expressed concern about the appropriateness of placing water commissioners under the judicial branch to administer the law on the ground.

Rep. Boggio addressed page 12, item 2, and stated he is uncomfortable with a water commissioner being able to tell a landowner to put in a headgate they may never use. Mr. Petesch explained the provision is in current law and the distinction would be that the court can assess the cost and a judicial judgment could be enforced and the Department of Revenue (DOR) could begin a state debt collection process. Currently, water commissioners only require the placement of a headgate when it is necessary for the enforcement of everyone's water rights. Mr. Petesch suggested under the new proposal, water commissioners would be present at all times to enforce decrees.

Chairman Elliott asked whether water is a private property right. Mr. Petesch agreed. Chairman Elliott asked whether Montana or any other state polices private property rights. Mr. Petesch responded to some degree and explained the concept of a state engineer for enforcement of water rights is practiced in Wyoming. Mr. Petesch identified trespass laws as an example where private property rights are enforced. Mr. Petesch reminded Chairman Elliott that the discussion is about a private property right in a state-owned resource.

Public Comment

Lee Yelin is a past DNRC employee and a past water commissioner and is currently a consultant. Mr. Yelin believed the proposed legislation has been needed for a long time. Mr. Yelin expressed concerns and did not believe going through the DNRC administrative process would be faster. Mr. Yelin also believed the administrative hearings process through the DNRC should be separate from the policymakers.

George Alberda, Bozeman, is the water commissioner on the West Gallatin River. Mr. Alberda testified there are 35 active ditches from the Gallatin River and several hundred water users. Mr. Alberda believed things are going well in the Gallatin Valley, and that there are very few disputes and resulting litigation. Mr. Alberda explained that the district court meets with the

water users twice a year and keeps lines of communication open. Mr. Alberda believed the system is working well in the Gallatin and urged the WPIC to not try to fix something that is not broken.

Leslie Kenne, a water commissioner from Willow Creek, agreed with Mr. Alberda and agreed ranchers would rather hear from her than a state agency. Ms. Kenne stated she has a good working relationship with both the ranchers and the district court.

Walt Sales, representing AGAI, submitted "Response to February 2006 White Paper Regarding Water Management Following Adjudication" (**EXHIBIT 13**). Mr. Sales was concerned that water resources would suffer if the state were to become too involved in enforcement. Mr. Sales believed the discussion document needed a substantial amount of work and stated he would like to be included in any discussions.

Mr. Tubbs thought there was a fairly strong perception that the DNRC does not enforce water rights. Mr. Tubbs explained that from a staff perspective, enforcement means legal action and agreed in most cases, legal action is not taken. In 2007, there were approximately 100 actions taken by the DNRC. Mr. Tubbs stated that in reality, most legal efforts are spent protecting the DNRC from litigation. Mr. Tubbs thought it would be inappropriate to place the judge inside the enforcement agency. Mr. Tubbs cautioned the fiscal impacts would be substantial.

Anne Yates, an attorney for the DNRC, stated § 85-1-204, MCA, is an old statute that went into effect in the early 1930s and is only being used in connection with state water projects. Ms. Yates explained the proposal would mandate the DNRC's involvement in measuring and delivering water on any stream with any decree. Ms. Yates explained that the DNRC's actions can be appealed to the district court. Ms. Yates also believed that generally court employees have more clout than state employees and thought the actions of state employees would be suspect by local water users.

(Tape 5; Side B)

Ms. Yates also identified evidentiary issues with the proposal and wondered whether the DNRC would be assessed costs if it were unsuccessful in defending its water commissioners, or whether the DNRC would have the ability to assess costs against water users if it prevails. Ms. Yates also wondered whether collected money would go to the DNRC or the general fund. Ms. Yates noted the absence of headgates and measuring devices on many streams.

Mr. MacIntyre, testifying on his own behalf, explained that a state engineer existed until approximately 1972. Mr. MacIntyre supported the concept of creating a state engineer position, but thought the position should be autonomous.

Ms. Franz noted the different aspects of water issues throughout Montana. Ms. Franz suggested keeping the state engineer position separate from the DNRC. Ms. Franz also cautioned against giving the state engineer authority over the state projects because it could be a state project that gets shut off. Ms. Franz pointed out that sometimes a water commissioner is not appointed on a stream because there are no problems.

Committee Discussion and Action, if any

Sen. Jent thanked the members of the public for traveling to Hamilton to testify. Sen. Jent supported the creation of a state engineer's office. Sen. Jent believed there needs to be someone with the proper expertise to make decisions that can testify. Sen. Jent recalled past testimony about the drought, wells drying up, and people taking too much water. However, Sen. Jent stated he does not want to upset a process that is already working.

Chairman Elliott commented the discussion document was drafted because many people do not believe that there is proper enforcement. Chairman Elliott wondered about the possibility of letting the counties have control with the ability to ask the state to step in when necessary. Mr. Petesch agreed that could be possible.

Further Public Comment

Larry Draper, Water Commissioner, Bitterroot Valley Irrigation District, would like to see the system continue as is and thought the system is working well.

Further Committee Discussion

Rep. Cohenour asked whether, under the current system, basins with final decrees have the ability to hire a water commissioner. Mr. Petesch explained the courts do have jurisdiction over the decree, and that water users have to petition for a water commissioner. The enforcement of decrees currently resides with the district courts.

Rep., Cohenour asked where water commissioners currently reside. Mr. Tubbs responded that water commissioners currently reside with each district court that has enforceable decrees. Mr. Tubbs explained that water users can petition the district court for a water commissioner, and the fees to pay the commissioner are assessed through the court to the water users.

Rep. Cohenour asked what happens if an area does not request a water commissioner, but there are issues that need to be enforced. Mr. Tubbs explained disputes between neighbors can go to the district court, and that some issues are raised as complaints to the DNRC's regional manager. Rep. Cohenour asked whether the effective use of county attorneys across Montana has been an issue. Mr. Tubbs replied only the Gallatin County Attorney has been actively involved in enforcement issues.

Rep. Cohenour stated enforcement is not standardized throughout the state, and thought enforcement should be something everyone can count on.

Chairman Elliott commented that where enforcement is not working well, people are asking for help. Chairman Elliott solicited ideas from those areas where enforcement is working well.

Ms. Brown asked for a list of specific complaints from those areas where enforcement is not working well. Chairman Elliott agreed to provide the specifics.

ACCELERATED PERMITTING PROCESS—HB 831—Mr. Kolman

Working bill draft presentation, LC 5001

Mr. Kolman reviewed LC 5001 ([EXHIBIT 14](#)). Mr. Kolman explained the discussion paper would allow an applicant for a water right in a closed basin to skip the required hydrogeologic assessment if the applicant can show a mitigation plan or an aquifer recharge plan would offset at least 100 percent of the ground water.

Committee Questions

Rep. Hilbert asked whether 100 percent mitigation must be a direct recharge to the affected party. Mr. Kolman suggested the proposed language "regardless of adverse affect" should be discussed.

Public Comment

Mark Aagnes, Trout Unlimited, believed LC 5001 was a good proposal because it uses an existing mitigation plan and addresses location of the mitigation. Mr. Aagnes thought it was important to recognize a mitigation plan would still be necessary. Within the mitigation plan, there would be a need to understand how much water needs to be replaced to ensure a senior water user is not being affected. The mitigation plan also offers more flexibility and could be better than going through a complex expensive hydrogeologic assessment. Mr. Aagnes thought the document was a good place to begin discussions.

Ms. Brown reiterated her opinion that mitigation and/or an aquifer recharge plan would simply shift the burden.

(Tape 6; Side A)

Ms. Brown explained the case studies were directed to look at different drainages and the different type of hydrologic situations that could occur. Ms. Brown explained how HB 831 gave priority to the 14 people who had pending applications and suggested good science is looking at the problem, identifying needs, and using the case study to address identified issues. Ms. Brown asked if the hydrology is so complex, how it will be determined that mitigation is occurring.

Mr. Tubbs stated the simplicity of not requiring a hydrological assessment when the applicant has shown 100 percent mitigation is attractive. Mr. Tubbs explained the DNRC is concerned with the shifting of burden. Mr. Tubbs explained how HB 831 put a high burden on the applicant to (1) conduct a hydrogeologic assessment and determine the effects of development on ground water; and (2) determine whether there is net depletion to surface water that causes an adverse effect and develop a mitigation plan to offset that net depletion. Mr. Tubbs identified the standard as 100 percent mitigation of the net depletion to avoid adverse effect. The DNRC does not support 100 percent mitigation of diversion and would like the mitigation limited to net depletion. Mr. Tubbs explained how a supporting hydrological assessment is necessary in a complex system and was concerned about shifting the burden to the objectors or the DNRC. Mr. Tubbs recommended establishing flexibility for the DNRC to prove a mitigation plan is effective.

Ms. Brown believed the MBMG is not at a stage in the case study where they have looked at a single situation of an adverse effect that has been met through a mitigation plan or aquifer recharge plan. In addition, there is no enforcement if the mitigation plan fails. Mrs. Brown also noted there is no termination of the original ground water permit, even though mitigation failed.

Jim Rokosch, Ravalli County Commissioner, expressed his concerns with limitations and the lack of monitoring in the discussion document. Commissioner Rokosch suggested failed mitigation could result in significant litigation. Commissioner Rokosch could envision the proposal as shifting the burden of proof onto potentially affected citizens. Commissioner Rokosch did not support the discussion document LC 5001.

Bill Schenk, Department of Fish, Wildlife, and Parks, believed the idea came from the DNRC's Ground Water/Surface Water Task Force. Mr. Schenk recalled Mr. Tubbs' testimony that people are attempting to mitigate to the full extent of their depletion, so they do not have to identify all the water users that may be adversely affected. Mr. Schenk thought the legislation might not be necessary. Mr. Schenk cautioned that if the current practice does not continue, the WPIC would, hopefully, remain open to further discussion.

Committee Discussion and Action, if any

Rep. Cohenour commented on conducting a state-wide hydrogeologic study and stated the information is needed to address the various issues in the discussion documents. Rep. Cohenour solicited support for conducting a state-wide hydrogeologic study.

COMMITTEE DISCUSSION AND ANALYSIS OF DAY'S TOPICS

There was no further discussion, and the WPIC recessed at 3:55 p.m.

Wednesday, January 16, 2008

Visitor register ([Attachment 4](#)).

Chairman Elliott called the WPIC to order at 8:02 a.m. The secretary noted the roll ([Attachment 5](#)).

NOTICE OF INTENT TO DRILL—Mr. Petesch

Working bill draft presentation, LC 5002

Mr. Petesch explained the discussion document allows for objections to be filed to a notice of intent to drill ([EXHIBIT 15](#)). Mr. Petesch explained if no objections are received, a provisional permit would be issued. This would allow a person applying for a permit to determine up front if there will be potential objectors.

Committee Questions

Chairman Elliott asked if there would be a way to take care of all objections up front. Mr. Petesch thought there would need to be significant modifications to the permitting application process itself, which would require a substantial policy change. Chairman Elliott stated he was

hoping people would not have to expend a substantial amount of money up-front before they became aware of objections.

Public Comment

Mr. Tubbs stated the DNRC understands why the bill is desirable because of the cash need up front. Mr. Tubbs was concerned about subsection (2) and the provisional permit and the suggestion an applicant "may" apply for a permit. Mr. Tubbs wanted to avoid the perception that the provisional permit is all that is needed and wanted to ensure individuals understand that they must go through the entire permitting process. Mr. Tubbs identified a need for an opportunity to object after the pump test since that data could indicate potential adverse effects.

Steve Kilbreath, DEQ, commented that the DEQ has a spec approval process for municipal or public wells and stated skipping DEQ's process would result in an enforcement action.

Committee Discussion and Action, if any

Rep. Cohenour asked Mr. Tubbs about the language "the department may issue a provisional permit" and asked if the language would remove the DNRC from the permitting process. Mr. Tubbs responded that a provisional permit is the permitting process and reiterated his concern about "may." Mr. Tubbs explained an interim permit can now be issued if there is a likelihood that a provisional permit will be issued. Mr. Tubbs added the interim permit helps people be in compliance with the law as they go through the application process.

Chairman Elliott commented the entire object of the draft was to make it easier and more attractive for people to put in a public water supply system with some certainty. Chairman Elliott wondered how that could best be accomplished. Mr. Tubbs thought there was merit to the concept, but that technical data would be needed first. Mr. Tubbs stated he would like to look at § 85-2-361, MCA, and possibly make that a more simple process. Chairman Elliott welcomed any suggestions from Mr. Tubbs to make the process easier.

GROUND WATER QUALITY—Mr. Petesch

Working bill draft presentation, LC 5004

Mr. Petesch reviewed the purpose of LC 5004 ([EXHIBIT 16](#)) and directed the WPIC to page 7. Mr. Petesch explained the discussion document would allow local governments to require more stringent standards than those required by state law because of unique circumstances such as dense soil. Mr. Petesch depicted the discussion document as a proposed tool for local governments.

Public Comment

Myra Shults, a consulting land-use attorney for the Montana Association of Counties (MACo), stated that § 76-3-511, MCA, has only been used once and is very complicated. Ms. Shults stated she would like to have an opportunity to discuss her technical comments with Mr. Petesch.

Steve Kilbreath viewed the discussion paper favorably. Mr. Kilbreath explained that the DEQ has approved approximately 25,000 lots with individual wells and septics in the past five years. Mr. Kilbreath identified a need to support counties and local governments.

Commissioner Rokosch agreed the proposal is very technical. Commissioner Rokosch depicted the section on page 7 as critical and thought it was a clarifying step in the right direction. Commissioner Rokosch identified a need for a definition of what constitutes peer-reviewed documentation. Commissioner Rokosch recalled a question of whether the Environmental Protection Agency (EPA) guidelines would constitute peer review since the guidelines have recommended measurements. Commissioner Rokosch also addressed pages 10 and 12 and the need to define and clarify what would be prioritization. Commissioner Rokosch also expressed concern regarding how the discussion document would interface with the Montana Environmental Policy Act (MEPA). Commissioner Rokosch did not believe that 60 days would be an adequate timeframe for a county to make a decision. Commissioner Rokosch stated he was uncertain whether MEPA had any place in the permitting of subdivisions.

(Tape 1; Side B)

Commissioner Rokosch summarized that he thought the provision could be helpful and was supportive of giving local governments the authority to fulfill its duties. Commissioner Rokosch was unsure about the practicality of the discussion document unless the issues of resources and the ability to interface with MEPA are addressed.

Committee Discussion and Action, if any

Chairman Elliott reminded the WPIC and audience that the documents are bill drafts for discussion purposes only.

PERMITTING PROCESS DISCONNECT—WATER RIGHTS AND SUBDIVISIONS—Mr. Kolman

Working Bill Draft Presentation, LC 5006

Mr. Kolman addressed LC 5006 and explained the discussion document attempts to address concerns about what constitutes an adequate and legal water supply for a subdivision ([EXHIBIT 17](#)).

Committee Questions

There were no questions from the WPIC.

Public Comment

Ms. Shults explained the purpose of § 76-3-622, MCA, was to require scientific information from the subdivider during the application process, so people who were concerned about the effects of the subdivision had the information. However, since 2005, developers have skirted around the requirement since they did not want county commissioners making any scientific decisions. SB 290 allowed counties to collect information, but did not allow for any scientific decisions. Ms. Shults stated once the information is collected, it is sent verbatim to the developer to submit to

DEQ with its application, or the information is summarized and given to the developer. Ms. Shults would like to add to the law that the counties can send the information directly to the DEQ, as well as to the developers. Ms. Shults suggested the proposal notifies the public either that the applicant applied for a water right, or that they do not have to apply for a water right, and the information sent to the DEQ. Ms. Shults was uncertain whether the discussion document was the right avenue and suggested it may be better if the developer notified DEQ directly.

Mr. MacIntyre, Utility Solutions, identified the real issue as timing. Mr. MacIntyre wondered whether a contested case hearing process was needed and suggested a better process would be a negotiated permitting process within the requirements of HB 831. Mr. MacIntyre thought a negotiation process could provide for the right to appeal and the permit could be more timely developed.

Mr. Kilbreath explained that one of the disconnects between the DEQ and the DNRC had already been remedied. Mr. Kilbreath explained that in the past, the DEQ was receiving DNRC applications that were never actually submitted to the DNRC. Mr. Kilbreath explained continuing efforts are being made to ensure an application has actually been submitted to the DNRC.

Commissioner Rokosch strongly believed the ability to have exempt wells is needed, and the proposal was like trying to put a band-aid on a corpse.

Kathleen Driscoll, Ravalli County Commissioner, concurred with Commissioner Rokosch.

Committee Discussion and Action, if any

Rep. Cohenour asked Mr. Kilbreath whether he believed the problem would be solved by having two permitting processes that do not run parallel. Rep. Cohenour was concerned because, occasionally, there is no water legally available, but the permit is being issued.

Mr. Kilbreath did not believe the problem had been solved at all.

DATA STUDY PROGRAM—Mr. Petesch

Working Bill Draft Presentation—Mr. Petesch

Mr. Petesch explained that LC 5007 directs MBMG to implement a ground water investigation program for the purpose of gathering and compiling ground water aquifer data (**EXHIBIT 18**). The discussion document provides for an advisory council to help prioritize which sub-basins to start with and provides funding of the \$1.2 million required to do two sub-basins each biennium. Mr. Petesch directed the WPIC members to the funding options contained in the discussion document. Mr. Petesch also included a contingent voidness provision. Mr. Petesch stated the information would be helpful and could possibly reduce the cost of the hydrogeologic provisions of HB 831.

Committee Questions

Sen. Jent suggested that the MBMG had been compiling the aquifer data anyway. Mr. Petesch clarified HB 831 required the MBMG to do a pilot program, but the discussion document

requires a state hydrogeologic assessment and monitoring on a sub-basin level, and that the data does not currently exist with the MBMG.

Public Comment

Mr. Kilbreath suggested adding a dedicated well-monitoring program and requiring a down-gradient water-monitoring well and providing easements and access for the MBMG to collect long-term data.

Myra Shults stated she defended Park County a number of years ago when the neighbors said the wells in the area from the subdivision would affect their wells. Ms. Shults explained the parties were able to settle the lawsuit because the MBMG data showed the subdivision's wells were down gradient from neighboring wells. Ms. Shults supported the discussion document.

Mr. Tubbs saw merit in collecting ground water information and agreed the proposal parallels the existing assessment program, but adds monitoring and specifics in addition to the advisory program. Mr. Tubbs noted Section 1(1) has identical language to HB 831 and cautioned this would be a snapshot picture, and believed the different information an applicant brings to the table from a pump test cannot be anticipated by a snapshot taken at a previous date.

Commissioner Rokosch agreed with Mr. Tubbs' remarks and strongly supported the need for good information. Commissioner Rokosch thought there was a need for the information at the sub-basin level, and that the information would be helpful for Ravalli County's zoning efforts.

(Tape 2; Side A)

Commissioner Rokosch explained the current data is not in a form that can be utilized for a land-use analysis.

Committee Discussion and Action, if any

Rep. McChesney wondered whether the existing committee referenced earlier could be utilized. Mr. Petesch agreed the existing committee could be given the function and that would be a policy decision.

Rep. Cohenour commented that she would like to see the process accelerated. Rep. Cohenour reiterated the need for a state-wide hydrogeologic study and would like to see the data made available to developers, counties, departments, and anyone else who would find the information useful. Rep. Cohenour cited a need to compile the data as quickly as possible to address all the issues before the WPIC. Rep. Cohenour sought support for funding a state-wide hydrogeological study and noted some WPIC members would be gone within the next few years because of term limits.

FISH, WILDLIFE, AND PARKS PROCESS FOR DETERMINING INSTREAM FLOW LEVELS AND WHEN FISHING CLOSURES ARE NECESSARY—FWP STAFF

Bill Schenk, Montana Department of Fish, Wildlife, and Parks, gave a power point presentation entitled "Fisheries Conservation Through Instream Flow Protection and Angling Closures" (**EXHIBIT 19**) and submitted a written paper entitled "Montana Department of Fish, Wildlife, and Parks Drought Angling Closure Process, 2007" (**EXHIBIT 20**).

(Tape 2; Side B)

Mr. Schenk added that FWP's fishing closure policy is in the process of being moved into FWP's administrative rules, and that there will be an opportunity for public comment.

Committee Questions

There were no questions from the WPIC.

Public Comment

Commissioner Driscoll spoke about how Ravalli County depends on its tourism industry and the area's economic development has to be decided by commissioners.

(BREAK)

Chairman Elliott explained why the WPIC is traveling to the various basins and emphasized the importance gaining the local perspective and obtaining public comment.

PUBLIC COMMENT ON ANY MATTER NOT CONTAINED IN THIS AGENDA AND THAT IS WITHIN THE JURISDICTION OF THE WPIC

Harvey Hacket served on the Bitterroot Irrigation Board. Mr. Hackett spoke about the difficulty of paying ditch riders on small streams and the burden of having to pay someone to defend a water right.

(Tape 3; Side A)

Mr. Hacket stated Montana does not charge the U.S. Forest Service for its water. Mr. Hacket suggested Montana should follow Colorado's lead and charge the U.S. Forest Service for the water it uses.

Diane Thomas-Rupert, an 1852 water right holder, is responsible for protecting her water right. Ms. Thomas-Rupert identified enforcement as very important and stated she has expended substantial time, effort, and money to protect her 1852 right.

Commissioner Driscoll commented that it takes a substantial amount of time to carefully consider subdivision applications. Commissioner Driscoll stated the Ravalli County Commissioners are very aware of every subdivision and what that subdivision means.

John Harvala, Missoula City County Health Department, believed the implementation of all the permitting and water right regulations is creating a huge disincentive for public water systems. Mr. Harvala believed public water systems would offer the best and safest source of water; however, exempt wells are being utilized more.

Ms. Brown shared solutions that are working in Ravalli County, including a Volunteer Advisory Board to the district court and the utilization of a revolving fund to pay wages of the water commissioners and maintenance. Ms. Brown identified funding as the largest issue. Ms. Brown

stated that if funds are limited, she would rather see the funds utilized to solve concrete problems. Ms. Brown identified problems concerning contested case proceedings. Ms. Brown explained how objectors get a notice of hearing that refers to the need for legal counsel and spoke about a recent situation on a contested case hearing where she received notice less than ten days before the hearing date. Ms. Brown stated the situation arises with trusts, which are a common way to transfer land to children. Ms. Brown questioned whether the ten-day objectors' notice should apply to a trust. Ms. Brown would like to see an easier way for a family farm to be represented. Ms. Brown summarized that if a person cannot afford legal counsel, sometimes the only recourse is to drop out.

Mr. MacIntyre, City of Hamilton, explained the City of Hamilton is in the process of having its water rights adjudicated and the rights will be set with the current amount used by the city. Mr. MacIntyre explained that under the Prior Appropriation Doctrine, water users have had the right to continue to develop their right with due diligence. Mr. MacIntyre wondered how cities could develop for the future without a reservation process or the ability to speculate its needs in the future. Mr. MacIntyre referenced the City of Missoula's Growing Cities Doctrine and suggested the WPIC may want to consider the doctrine. Mr. MacIntyre requested the WPIC to consider allowing cities and towns to acquire water rights for the future.

Commissioner Rokosch appreciated the WPIC's time and emphasized the importance of water availability and water quality in terms of public health and resources. Commissioner Rokosch emphasized the challenges to local governments and the Legislature to make wise decisions. Commissioner Rokosch suggested looking at measures that provide partnerships. Commissioner Rokosch emphasized that high-growth areas do not have time to take small steps. Commissioner Rokosch hoped he and the WPIC were not spinning their wheels and urged the WPIC to be proactive and bold in its recommendations.

Commissioner Rokosch addressed LC 5004 and expressed concerns about page 4, subsection (A) and the language stating "average lot size is 1 acre or less" and stated the language is unfair since a water user may continue to be assessed for irrigation water delivery even though water may not be deliverable. Commissioner Rokosch also questioned the language on pp. 10-11 dealing with annexation and identified a need to be clear where a municipality's responsibility lies. Commissioner Rokosch hoped the WPIC would have continuing positive discussions regarding the drought.

Richard Martin, a rancher from Florence, referred to the WPIC brochure, and cited a Chinese proverb that states "waste not, want not." Mr. Martin depicted Montana as being wasteful and trying to address its problems with legislation and litigation. Mr. Martin spoke about the potential use of high-mountain lakes in the Hamilton area. Mr. Martin believed not utilizing the high-mountain lakes was wasting a water resource and suggested everyone could have water by improving and increasing lake holding levels using boulder dams. Mr. Martin cited a lack of holding capacity and the resulting wasted water during the months of May and June. Mr. Martin suggested holding back flood water from high-mountain lakes for a month or two for use when water is scarce.

(Tape 3; Side B)

Chairman Elliott thanked the public for participating.

COMMITTEE DISCUSSION AND ANALYSIS OF DAY'S TOPICS

Prioritization of Topics

Mr. Kolman sought direction from the WPIC regarding the discussion draft documents and water marketing, which was also included in the WPIC's Work Plan.

Rep. Cohenour suggested adding discussion papers regarding water quality in aquifer mitigation and recharge. Rep. Cohenour emphasized it is important to replace water with cleaner water than the water that was taken out or, at the very least, the recharge water should be at the same level. Rep. Cohenour solicited assistance from the various agencies.

Rep. Cohenour also requested a discussion document regarding the opportunity to help counties and developers put together an application to a state revolving fund or for federal funding for infrastructure planning on water and sewer and public systems. Rep. Cohenour thought there was a need for incentives for people to do the right thing and wanted to make it as easy as possible.

Rep. Cohenour also requested information from the agencies on where to access money and suggested prioritizing to get the money on the ground as soon as possible.

Rep. McNutt stated he carried the water adjudication bill and HB 831 and believed the most important thing to look after is Montana's water. Rep. McNutt identified adjudication, water quality, and a state-wide hydrological study as the most important needs. Rep. McNutt believed the hydrological study is needed to provide a base for hydrology in Montana. Rep. McNutt believed Montana Tech should be funded to do the study. Rep. McNutt believed the hydrological study is especially needed for high-growth areas. Rep. McNutt agreed with the need to look at water quality in aquifer recharge and the critical need for guidelines. Rep. McNutt was disappointed there was not a big push on water issues during the last legislative session and urged people to become involved.

Rep. Cohenour wondered how the information and feedback on issues would be filtered to the WPIC members and the public. Rep. Cohenour suggested staff could receive and summarize all comments and provide them to the WPIC. Rep. Cohenour also thought people with specific topics should be invited to present at future meetings, but was uncertain whether the entire WPIC needed to be involved in setting the agenda.

Mr. Kolman invited the public to send him comments and noted there are opportunities for public comment at each meeting. In addition, draft legislation and the WPIC's draft final report will go out for public comment. The draft report and draft legislation will be available by the June 10 meeting, and final changes and approval of the final report will be in September.

Chairman Elliott asked whether there were any particular draft discussion papers that the WPIC did not want to move forward. There were no responses from the WPIC members. Chairman Elliott decided the WPIC would move forward with the current discussion papers, as well as the discussion documents requested by Rep. Cohenour.

Rep. McChesney thought there was a need to look at how to deal with future growth and the need to address expansion of water rights. Rep. McChesney agreed with Rep. McNutt and the

need for an unbiased hydrological assessment. Rep. Cohenour asked to have a presentation on the next agenda addressing the growing cities initiative.

Rep. McNutt believed Montana will have water marketing in the future and wanted to know what options are currently available.

Rep. Boggio stated he would like an opportunity to review the draft discussion documents and submit a list of priorities to Mr. Kolman. Rep. Boggio was concerned with the current water laws that are not being enforced. Rep. Boggio believed the first in time, first in right doctrine would be meaningless without enforcement. Sen. Jent agreed with Rep. Boggio's suggestion.

Rep. Cohenour asked how changes to the discussion papers would occur. Rep. McNutt clarified public comment would be reviewed, and the WPIC members would decide what changes to make.

Mr. Petesch suggested one option would be to have the discussion documents as working documents with the changes incorporated and identified in drafts with redlining and strikeouts.

Rep. Boggio was curious what type of vote would bring a bill out of the WPIC as a committee bill.

(Tape 4; Side A)

Chairman Elliott clarified a three-quarters vote would be needed. However, Rep. Cohenour recalled the WPIC had agreed a 100 percent vote would be needed for a committee bill. Rep. Cohenour emphasized the need to have a committee bill in order to get the issues out for discussion.

Rep. McNutt stated if he does not vote for a draft, he does not want the draft coming out as a committee bill. Rep. McNutt agreed with the need for education but did not believe successful education could occur in 90 days.

Chairman Elliott suggested the vote debate should be scheduled for a future meeting.

Mr. Petesch suggested reviewing the minutes from the organizational meeting to determine what was decided.

Rep. Cohenour commented individual legislators would be able to bring forward individual legislation.

Meeting Schedule

Chairman Elliott stated there were five more meetings and \$34,000 available. Chairman Elliott suggested enough funding is available to schedule an additional meeting in March, May, or July. Chairman Elliott suggested another meeting could be scheduled outside of Helena.

The next meeting was tentatively scheduled for March 13-14 in Helena. Rep. Cohenour suggested eliminating the meeting in February and holding the meeting in March to give members an opportunity to review the discussion documents.

Work Plan Assessment

Mr. Kolman reminded the WPIC members that HB 304 mandated the study of water marketing and had specific requirements. Mr. Kolman stated water marketing needs to be addressed by the WPIC and informational presentations need to be made at future meetings. Mr. Kolman offered to provide research, noted the broad spectrum of the topic, and solicited suggestions on how to narrow the scope of the topic.

Rep. McNutt suggested it would be helpful to have a paper on basic water marketing.

OTHER BUSINESS

Chairman Elliott requested permission to send Krista Lee Evans, former Environmental Research Analyst, a card of thanks for her work with the WPIC. The WPIC members agreed.

Chairman Elliott encouraged the members of the audience to remain involved and suggest solutions.

Rep. Cohenour stated her desire to have speakers regarding water marketing at the March meeting and would like to discuss the discussion papers at each meeting. Mr. Kolman agreed to provide a paper regarding basic water marketing and will schedule a panel presentation on water marketing for the March meeting.

INSTRUCTIONS TO STAFF

There were no further instructions to staff.

ADJOURN

Rep. Cohenour moved the meeting be adjourned. The motion carried unanimously by voice vote, and the meeting adjourned at 11:30 a.m.