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Water Policy Interim Committee

62nd Montana Legislature

SENATE MEMBERS

BRADLEY MAXON HAMLETT--Chair
DEBBY BARRETT
SHARON STEWART-PEREGOY
CHAS VINCENT

HOUSE MEMBERS

WALTER MCNUTT--Vice Chair
PAT CONNELL
BETSY HANDS
BILL MCCHESENEY

COMMITTEE STAFF

JOE KOLMAN, Lead Staff
HELEN THIGPEN, Staff Attorney
KEVIN MCCUE, Secretary

MINUTES

Approved September 10, 2012

June 19, 2012

Room 306
Gallatin County Courthouse
Bozeman

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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

COMMITTEE MEMBERS PRESENT

SEN. BRADLEY MAXON HAMLETT, Chair
REP. WALTER MCNUTT, Vice Chair

SEN. SHARON STEWART-PEREGOY

REP. PAT CONNELL
REP. BETSY HANDS
REP. BILL MCCHESENEY

COMMITTEE MEMBERS EXCUSED

SEN. DEBBY BARRETT
SEN. CHAS VINCENT

STAFF PRESENT

JOE KOLMAN, Lead Staff

HELEN THIGPEN, Staff Attorney
JASON MOHR, Research Analyst
KEVIN MCCUE, Secretary

Visitors

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

COMMITTEE ACTION

- The WPIC approved the minutes from its March 6, 2012 meeting.

CALL TO ORDER AND ROLL CALL

00:00:00 Sen. Hamlett called the meeting to order and roll was noted ([Attachment 3](#)). Rep. McNutt moved to approve the minutes of the WPIC's March 6, 2012 meeting. The motion passed unanimously by voice vote.

AGENDA

COMMITTEE INTRODUCTIONS AND STATEMENTS

00:01:07 Sen. Hamlett introduced himself and invited the committee members to do the same.

00:01:34 Rep. McNutt spoke regarding the prior appropriation doctrine and assured attendees that the interpretation of "beneficial use" would remain the same. Rep. McNutt explained the purpose of HB 602 (2011), which brought on this study.

00:09:54 Rep. McChesney thanked the attendees for their input. Rep. McChesney said water is Montana's most important resource and must be protected for future generations of Montanans.

00:11:11 Rep. Hands welcomed the opportunity to address the exempt well issue and meet with members of the public who have a large stake in its resolution.

00:12:57 Sen. Stewart-Peregoy urged balance and respect for sacred, sustaining water. Sen. Stewart-Peregoy urged examination of the available science and current needs to ensure water for future generations.

00:17:16 Rep. Connell spoke on the seriousness of the subject and the potential for error in analysis. Rep. Connell said as a headwaters state, all Montana watersheds are managed by federal agencies, and their management style can impact the volume of water Montana has to manage and utilize.

OVERVIEW OF EXEMPT WELL STUDY AND PROPOSALS

- 00:18:50 Mr. Kolman gave a brief history and current definition of the domestic well exemption. Mr. Kolman explained the state's prior appropriation doctrine and how the exemption has changed over the years. Mr. Kolman explained that the current exemption placed a limit on wells of 35 gallons per minute and 10 acre feet a year as long as it is not part of a "combined appropriation." Mr. Kolman said that the law does not define "combined appropriation" but leaves said definition to the administering agency of the Executive Branch to define. Mr. Kolman said that "combined appropriation" has been defined for the last 20 years as two wells that are physically connected. Mr. Kolman explained that the current study of exempt wells had been mandated by HB 602 (2011). Mr. Kolman explained each of the bills drafted in collaboration with interested parties ([EXHIBIT 1](#)) ([EXHIBIT 2](#)) ([EXHIBIT 3](#)) ([EXHIBIT 4](#)) ([EXHIBIT 5](#)). Mr. Kolman reminded attendees that public comment will be accepted until the WPIC's final meeting in September 2012. Mr. Kolman also invited those in attendance to examine the WPIC's draft study report ([EXHIBIT 6](#)).
- 00:28:52 Sen. Hamlett reminded the attendees that the Montana Constitution states that "all the water that falls and flows within the confines of the boundary of the State of Montana belongs to the State for the beneficial use of its citizens." Sen. Hamlett said that Montana will be challenged by downstream states and that he aimed to ensure water for use not only today but additional water for use in the future.

PUBLIC COMMENT ON EXEMPT WELL STUDY AND PROPOSALS

- 00:30:59 Joe Gutkoski, President of Montana Rivers, commented on exempt wells in closed basins. Mr. Gutkoski said that the 113,000 exempt wells in Montana compete with other uses and that although it would be difficult, the state should require permits for all wells ([EXHIBIT 7](#)).
- 00:38:31 David Graham offered his perspective as a developer in the Gallatin and urged the WPIC to examine the long term economic consequences of a change to the law in regard to exempt wells. Mr. Graham said that it is economically unfeasible to install central water and sewer systems outside incorporated areas and that change to the exemption would drive up the cost of land adjacent to already incorporated areas, as well as increase the cost of living and housing.
- 00:41:10 Terry Threlkeld, a licensed professional engineer who works in Montana with water and wastewater systems, said it was unclear what current problems the proposed legislation would attempt to resolve. Mr. Threlkeld said data shows Montana has plenty of water. Mr. Threlkeld said legislation should focus on reform of the current water rights system in Montana and he does not think there is sufficient data available to make changes to laws.

(Break)

- 00:58:30 Clinton Cain pointed to the compact between the United States and the State of Montana contained in the Montana Code Annotated (MCA) regarding water ownership. Mr. Cain urged the WPIC to be wary of chemicals being discharged into the ground water.
- 01:05:56 Dane Gamble pointed to the positive effects of lawn watering.
- 01:13:50 Krista Lee Evans, lobbyist representing the Senior Water Rights Coalition (SWRC), Montana Water Resources Association (MWRA), Montana Stockgrowers Association (MSGA), Montana Farm Bureau Federation (MFBBF) and the Association of Gallatin Agricultural Irrigators (AGAI), spoke in support of LC 8004. Ms. Evans said the organizations she represents support LC 8004 because it provides equality in permitting, does not eliminate exempt wells, and leaves discretion to the developer. Ms. Evans said that LC 8004 does not preclude larger subdivisions or uses and does not try to control growth through water rights.
- 01:22:28 Scott Davis said there had been no case of an exempt well negatively affecting a senior water rights holder. Mr. Davis said there was no apparent problem with the law and the exemption should remain as it is.
- 01:24:40 Mark Peterson, Trout Unlimited (TU), spoke in support of LC 8000. Mr. Peterson said although there is no way to project growth it is sure to continue and TU is concerned about the potential cumulative impact of tens of thousands of wells in the coming years.
- 01:26:34 Harry Murphy, real estate developer, said he is in favor of controlled growth and expressed support for some sort of regulation of exempt wells.
- 01:28:08 Hertha Lund, Philips, Fergus, McCone, Garfield, Petroleum and Valley counties, said she would have preferred the WPIC had held a meeting regarding this issue in Eastern Montana and that her members did not believe there to be a problem with the current exemption. Ms. Lund urged that none of the bills go before the Legislature.
- 01:29:54 Meg Casey, Bozeman, spoke of the importance of water to outdoor recreation and expressed concern with the increased reliance on permit-exempt wells. Ms. Casey said some appropriated streams in Gallatin County are already dewatered. Ms. Casey expressed support for draft legislation that would limit the number of exempt wells allowed within a subdivision.
- 01:33:53 William Mealer, Fish, Wildlife and Parks' (FWP) Citizen's Advisory Committee and Safari Club International, spoke in favor of regulation of groundwater removal and said data indicated an effect on surface water flows by ground water removal.
- 01:39:18 Linda Clark said she lives in a subdivision north of Bozeman in which all residents have exempt wells and septic systems. Ms. Clark said she recognized the potential for severe problems in the future regarding exempt wells. Ms. Clark

said LC 8004 may be a reasonable way to proceed as she said it did not appear to favor any side of the issue.

- 01:45:07 Harold Blattie, Montana Association of Counties (MACo), urged the WPIC to proceed with caution and discouraged the implementation of a "one size fits all" approach to exempt wells. Mr. Blattie said the WPIC's draft legislation would have statewide implications and warned it against enacting legislation that would make county commissioners into water cops.
- 01:52:12 Tom Hopgood, Montana Mining Association (MMA), asked the WPIC to take into consideration the small water exemption's importance to mining and small business and noted there had not been a single instance of a senior water rights holder being adversely impacted by an exempt well.
- 01:53:51 Rep. Kathleen Williams, HD 65, said the problem with exempt wells deals with legal availability as well as physical availability of water. Rep. Williams said the way "combined appropriation" had been defined by law in the 1990s had been a mistake. Rep. Williams said the Department of Natural Resources and Conservation (DNRC) and state were charged with promoting the orderly development of water resources and questioned whether the rise in use of exempt wells constituted "orderly development."
- 01:58:25 Dennis Hardin recounted his experience developing a small parcel with an independent water system at great expense while other lots nearby utilize exempt wells. Mr. Hardin questioned if there was a problem and asked if agriculture would be the next target of regulation.
- 02:04:44 Dave Potts, Potts Drilling, said he has been drilling wells for 38 years and asked if there had been a case in which exempt wells have had an impact on senior water rights holders. Mr. Potts said changes have been apparent in water tables, but that those changes are associated with changes in land use, agriculture, and climatic changes.
- 02:07:56 Mark Thompson, environmental superintendent of the Golden Sunlight Mine and Environmental Committee Chair of the MMA, stressed the importance of the exempt well system to his industry, especially to the exploration process. Mr. Thompson said he was concerned that the draft legislation could constitute a slippery slope to further elimination of exempt wells even though the proposed legislation deals specifically with subdivisions. Mr. Thompson said he hoped the WPIC would quantify the benefits of change and weigh them against the potential liabilities to economic growth before it makes any decisions or recommendations.
- 02:10:26 Ken Vidar said the hidden agenda behind proposed water legislation is control of development. Mr. Vidar said studies do not indicate any problems with the current exemption and that there had been no reports of exempt wells infringing on senior water rights.
- 02:14:48 Sheryl Ann Delaney said some water contains pollutants that lead to cancer and birth defects.

- 02:22:57 Stephen Hunts endorsed LC 8000. Mr. Hunts said he would like to see permits for all wells. Mr. Hunts said that the paucity of data regarding exempt wells does not mean there is not a problem related to exempt wells. Mr. Hunts said permitting would provide needed data.
- 02:25:17 John Blue Mountain Green Fire said all wells should be permitted.
- 02:26:55 Tara DePuy, Montana Association of Counties (MACo), said that a "one size (solution) does not fit all" counties when it came to exempt wells. Ms. DePuy said that none of the proposed bill drafts would work statewide. Ms. DePuy said using the Montana Subdivision and Platting Act to address the exempt well process would lead to unintended consequences.
- 02:28:25 Walt Sales, AGAI President, said he preferred equality of permitting.
- 02:30:07 Curt Sampson, Montana Water Well Drillers' Association (MWWDA), spoke in support of LC 8003. Mr. Sampson warned of negative economic impacts of new legislation and said data did not suggest exempt wells were polluting other water.
- 02:36:26 Ellen Trygstad pointed to a lack of data regarding the Bridger Range's geology and hydrology. Ms. Trygstad said that Montana State University recently lost a hydrology professor and urged the Legislature to ensure the universities are training enough people in hydrogeology and geology.

COMMITTEE QUESTIONS FOR THE PUBLIC

- 02:41:00 Rep. Hands commented that LC 8000 does not constitute a statewide solution but rather instates a pilot project that designates closed basins for further examination. Rep. Hands asked for further input regarding LC 8000.
- 02:42:30 Rep. McNutt commented that the WPIC has realized since the beginning of its investigation that a "one size" solution would not fit all. Rep. McNutt said any of the bill drafts can be amended and expressed concern that LC 8000 could potentially limit development.

PUBLIC COMMENT on any matter not contained on agenda and that is within the jurisdiction of the WPIC

- 02:44:35 Joe Gutkoski referred those who do not think there is a lack of water to FWP's de-watering list.
- 02:46:15 Sen. Hamlett thanked the attendees for their suggestions and urged them to follow the legislative process.

Adjourn

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