



PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

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 June 19, 2012

March 6, 2012

Room 172
State Capitol Building

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.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select *Committees*, then *Interim*. Once on the page for *Interim Committees*, scroll down to the appropriate committee. The written minutes summary, along with the audio and video recordings, are listed by meeting date on the interim committee's web page. You must have Real Player to listen to the audio recording or to view the video.

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. DEBBY BARRETT
SEN. CHAS VINCENT

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

COMMITTEE MEMBERS EXCUSED

SEN. SHARON STEWART-PEREGOY

STAFF PRESENT

JOE KOLMAN, Lead Staff
HELEN THIGPEN, Staff Attorney

KEVIN MCCUE, Secretary

Agenda and Visitors' List

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

COMMITTEE ACTION

- The WPIC approved the corrected minutes from its January 10 and 11, 2012 meetings.

CALL TO ORDER AND ROLL CALL

00:00:00 Sen. Hamlett called the meeting to order and roll was noted ([Attachment 3](#)).

AGENDA

Approval of minutes from January 2012

00:00:41 Rep. Connell requested a correction to page 8 of the WPIC's January 10, 2012 minutes that would change the phrase "federal resources" to "state assets."

00:02:05 Sen. Hamlett moved the minutes be approved as corrected. The motion passed unanimously by voice vote.

00:02:20 Sen. Hamlett commented on the U.S. Supreme Court's PPL Montana, LLC v. Montana decision and asked the WPIC to read the decision and inform itself of changes to the law.

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM UPDATE

Mary Sexton, DNRC Director

00:03:15 Dir. Sexton delivered the Renewable Resource Grant and Loan (RRGL) Program update and explained how grants and loans are used to fund state projects ([EXHIBIT 1](#)). Dir. Sexton said that the RRGL Program had distributed about \$8.5 million in the last three sessions. Dir. Sexton said the RRGL Program was involved in forming the state water plan as well as providing flood-related assistance and irrigation systems recovery. Dir. Sexton said that the program is looking for funding opportunities to improve infrastructure in northeast Montana and recommended the WPIC investigate issues associated with mining and hydraulic fracturing. Dir. Sexton said most of the RRGL Program's funding goes to project grants and explained the grant application process.

Public Comment

00:12:00 None.

Committee questions, discussion, and action, if any

- 00:12:11 Rep. McNutt complimented the RRGL Program.
- 00:12:41 Sen. Hamlett asked for Dir. Sexton's recommendations for the RRGL Program's future. Dir. Sexton said that the program's approval process needed to remain competitive.

WATER RIGHT ADJUDICATION UPDATE

DNRC - Mary Sexton

- 00:14:22 Dir. Sexton presented the DNRC's Water Adjudication Report with additional maps of Racetrack and Willow Creeks (**EXHIBIT 2**) as well as information on Water Court enforcement requests.

Montana Water Court - Judge Loble

- 00:21:10 Judge Loble noted a portion of 85-2-270, MCA, regarding enforcement that states the "product of the adjudication is enforceable decrees." Judge Loble updated the WPIC on the Associate Water Judge position. Judge Loble reminded the WPIC of the controversy in 2005 regarding the DNRC water right database and said the database has been upgraded and that the Water Court is now putting data into the database. Judge Loble said that new issues arise as the Water Court issues new decrees. Judge Loble said the Water Court was implementing the intentions of HB 22 (2005) by moving FTEs from the DNRC to the Water Court and that it would be requesting three FTEs be moved. Judge Loble addressed an e-mail received by Mr. Kolman containing questions from Maxine and Ron Korman.

Public Comment

- 00:37:04 None.

Committee questions, discussion, and action, if any

- 00:37:13 Sen. Barrett asked Judge Loble if he felt adjudication was coming to a close. Judge Loble said that it was. Sen. Barrett asked what counties in southwest Montana were involved with the issue remarks with treaties and tribes. Judge Loble said the areas fell south of a line from Hellgate Pass to Fort Benton. Sen. Barrett asked if the issue of exempt claims would have any bearing on reserved water right compacts such as those between Montana and the U.S. Forest Service. Judge Loble said they would probably not be affected, although the McCarran amendment's unusual allowance for state judicial jurisdiction over federal rights could interfere. Sen. Barrett asked if the law allowed for the Kormans' objection to their own rights. Judge Loble said such a situation was not unheard of or unusual. Sen. Barrett said she was pleased that the Judge had pursued the Kormans' e-mails.

- 00:44:41 Rep. McNutt said there was nothing in the law that referenced vested rights and asked Judge Loble if legislation is necessary. Judge Loble said he asked Ms. Korman what she wanted. Judge Loble said he could not predict what the Water Court's future suggestions regarding proposed legislation might be. Rep. McNutt said that there may need to be a change to statute.
- 00:46:50 Sen. Hamlett asked Judge Loble if there was a way to tell people not to let their stock drink at unadjudicated water. Judge Loble said there was no way to do so without fencing an entire stream.
- 00:56:12 Sen. Barrett referenced the law's stipulation that individuals do not have the right to trespass and asked if the trespass issue would come into play regarding the Reserved Water Rights Compact Commission's mandate to protect (mostly privately owned) cottonwoods at the Missouri River Breaks national monument. Judge Loble said that reserved water rights concept does not apply to private land.

GROUND WATER INVESTIGATION PROGRAM PROJECT UPDATES

John Wheaton, MBMG

- 01:00:12 Mr. Wheaton presented the results of two Ground Water Investigation Program (GWIP) projects ([EXHIBIT 3](#)).

Public Comment

- 01:21:48 None.

Committee questions, discussion, and action, if any

- 01:21:54 Rep. Connell asked Mr. Wheaton to elaborate on his conclusion that seepage is not always detrimental. Mr. Wheaton said that seepage could affect the water table and that it was the goal of irrigators to convey water and not have it leak. Rep. Connell referenced Mr. Wheaton's mention of seepage losses in the Dillon area and asked what level constitutes significant leakage. Mr. Wheaton said leakage significance would depend on perspective.
- 01:25:03 Sen. Hamlett asked Mr. Wheaton if the 1950s represented the water table's highest point. Mr. Wheaton said he was not sure but that it may be the highest.

STATE WATER PLAN UPDATE (85-1-203, MCA)

Tim Davis, DNRC

- 01:26:14 Mr. Davis said state water planning is just beginning and asked the WPIC if it would like to receive updates about the water plan. Mr. Davis anticipated a new water plan by December 2014 ([EXHIBIT 4](#)).

Public Comment

01:34:43 None.

Committee questions, discussion, and action, if any

01:34:50 Sen. Barrett asked Mr. Davis what other interest groups DNRC is working with in developing the water plan. Mr. Davis said DNRC was working with Montana Rural Water Users and the Clark Fork River Basin Task Force, among others.

01:35:47 Sen. Hamlett pointed to oil and gas leasing in northern Lewis and Clark, Cascade and Teton Counties and asked Mr. Davis if these developments would be included in the water plan's calculations. Mr. Davis said they would. Sen. Hamlett asked if the DNRC was looking at areas east of the continental divide in addition to eastern Montana. Mr. Davis said they were working with the Board of Oil and Gas Conservation to identify which deposits will see hydraulic fracturing. Sen. Hamlett asked if their calculations would include demands downstream. Mr. Davis said DNRC would work with other states in the Missouri River system, federal agencies and others concerned with the Clark Fork River.

01:38:20 Rep. McNutt asked that the WPIC and EQC both be kept abreast of the state water plan. Sen. Hamlett agreed.

(Break)

DITCH MAINTENANCE DISCUSSION

Overview of Musselshell Ranch Co. v. Seidel-Joukova, Helen Thigpen, staff attorney

02:01:52 Ms. Thigpen gave an overview of the claim against Joukova, which dealt with secondary ditch easements ([EXHIBIT 5](#)). Ms. Thigpen said the case was significant because prior to this decision "reasonableness" of interference had not been addressed. Ms. Thigpen noted that this decision did not concern stream access or recreation.

Public Comment

02:08:51 None.

Committee questions, discussion, and action, if any

02:09:06 Rep. McNutt addressed Justice Nelson's dissent.

ADJUDICATION STANDING DISCUSSION

Overview of Montana Trout Unlimited v. Beaverhead Water Co., et al, Helen Thigpen, staff attorney

02:10:08 Ms. Thigpen gave an overview of the Supreme Court's decision in which Judge Loble acknowledged Trout Unlimited's (TU) historical contributions in Montana's water adjudication efforts but agreed with the Beaverhead Water Company that TU did not have standing to be heard on objections to claims on the adjudication of existing rights unless they also had an ownership interest in its water or its use and awarded judgement in favor of Beaverhead Water Company ([EXHIBIT 6](#)). Ms. Thigpen noted that the memo included information on SB 36 (2011), which sought to clarify the definition of "good cause," and was vetoed by the Governor.

Public Comment

02:20:13 None.

Committee questions, discussion, and action, if any

02:20:34 Sen. Hamlett said he had carried SB 36 (2011) as he believed the intent of the law represented "interest in water ownership or its use" and that he would have accepted the Governor's amendments.

02:22:24 Laura Ziemer, TU, added that the objections in the Big Hole are on the path to settlement.

02:23:34 Sen. Hamlett said that any time a water right holder accepts money or assistance in regard to a water right other parties may claim interest down the road.

AVULSION DISCUSSION

Overview of SB 299 (2011) veto, Helen Thigpen, staff attorney

02:24:05 Ms. Thigpen presented the history of SB 299 (2011), including the Governor's veto and the Legislature's overturn of the veto ([EXHIBIT 7](#)). Ms. Thigpen said that although the Governor's veto message focused on the definition of "navigable," it is staff's opinion that navigability could only be determined by the court, not by any agency. Ms. Thigpen reminded the WPIC of the state's duty to get full market value for state trust lands.

Public Comment

02:29:09 None.

Committee questions, discussion, and action, if any

02:29:19 Rep. McNutt asked Ms. Thigpen to explain change of channel and asked if it was a fair and equitable system. Ms. Thigpen said that questions of boundary

ownership would continue to be an issue as these kinds of events continue to occur. Rep. McNutt said private property owners were the ones to suffer in these situations.

- 02:32:54 Rep. Connell seconded Rep. McNutt's comments and said that another unintended consequence of avulsion is that landowners are left with isolated patches of state land that could end up as breeding grounds for noxious weeds.
- 02:34:02 Sen. Barrett asked if there is a way to determine the number of acres Montana gained during last year's floods and if longitudinal data in that vein could be provided to the WPIC. Candace West, Chief Counsel for DNRC, said an inquiry would be made.
- 02:35:18 Ms. Thigpen noted that this was a very complicated area of law and that determining ownership in the many varied scenarios may prove time consuming.
- 02:36:13 Rep. McChesney asked Ms. Thigpen if there was something that could be done legislatively to simplify the law in regard to avulsion. Ms. Thigpen said that Sen. Hamlett's bill had attempted to do so and that the WPIC could look at it again. Rep. McChesney asked Ms. Thigpen to investigate.
- 02:37:11 Sen. Barrett asked that Ms. Thigpen see if any other states had situations similar to Montana's in regard to its DNRC and navigability.
- 02:37:47 Rep. McNutt said that DNRC had not declared navigability on vast numbers of rivers and streams but had expressed that it wanted such authority. Ms. Thigpen said she would look into the issue.
- 02:38:47 Sen. Hamlett asked Ms. West, standing in for the Director of DNRC, for her thoughts. Ms. West said that the question of "navigability" was complicated by the fact that it had to be determined as a matter of fact upon statehood and that no list of rivers owned by the state had been given. Sen. Hamlett said that a list was given. Ms. West said there was no list of navigable rivers at the time of statehood and that title transfer was done at statehood.
- 02:43:26 Sen. Hamlett asked Dir. Sexton about e-mails authored by Joe Lamson, Deputy Director, DNRC, which said the state could lose 1,400 miles of navigable rivers upon passage of SB 299. Dir. Sexton said that interpretation varies regarding the language of the law in question and that any change to law needed to maintain ownership of rivers acquired at statehood. Sen. Hamlett asked why SB 299 had not been sent back during session. Dir. Sexton said she thought it had been sent back with some amendments toward the end of the 2011 Legislative Session.
- 02:47:31 Sen. Hamlett commented that the bill had been drafted in an effort to deal with the consequences of mother nature. Sen. Hamlett said that it had not been his intent to take navigable rivers away from the state.
- 02:50:05 Rep. McNutt said that he was bothered by the tardiness of SB 299's May 6th veto.

- 02:52:11 Sen. Barrett asked if the WPIC would entertain a motion to support the same legislation in the next session.
- 02:52:31 Rep. McChesney said it might be premature to draft a bill and asked Ms. Thigpen to investigate modifications to the bill.
- 02:53:03 Mr. Kolman said that a bill draft encompassing some of the issues raised today could be brought to the WPIC's July meeting.
- 02:53:56 Sen. Hamlett said that SB 299 should be looked at again and welcomed public hearings.
- 02:54:42 Rep. McNutt recommended a redraft of SB 299.
- 02:55:24 Rep. McChesney agreed.
- 02:55:34 Mr. Kolman presented options to the WPIC regarding a redraft of the bill. Mr. Kolman said the quickest method was to have a committee bill drafted and ready for the WPIC's July meeting.
- 02:57:02 Rep. Connell asked if it was possible to have a draft ready at the WPIC's May meeting. Mr. Kolman said that it could be delivered upon completion.
- 02:57:47 Sen. Hamlett called a recess.

(Lunch)

RULE REVIEW

Helen Thigpen, staff attorney

- 03:56:35 Ms. Thigpen introduced the rules update and recent proposals ([EXHIBIT 8](#)).

Public comment

- 03:58:00 None.

Committee questions, discussion, and action, if any

- 03:58:01 None.

EXEMPT WELL OPTIONS

- 03:58:08 Mr. Kolman introduced discussion draft legislation related to exempt wells and explained the process for revising the drafts.

LC 8000 - Define combined appropriation and require CGWA mitigation ([EXHIBIT 9](#))

Proponents

- 04:01:26 Laura Ziemer, TU, said the draft changes the definition of combined appropriation so that subdivisions using exempt wells would be included in that category. Ms. Ziemer said counties would set up an exchange program where applicants could get mitigation water without going through the permitting process.
- 04:04:01 Mr. Youngberg questioned the draft's county-wide designation.
- 04:05:16 Krista Lee Evans, Senior Water Rights Coalition (SWRC), pointed to the draft's page 16, subsection (b). Ms. Evans expressed concern that the mitigation exchange was being set out in rule rather than by the Legislature. Ms. Evans asked if receiving credit in exchange for mitigation water really offset adverse effects.
- 04:06:30 Holly Franz, PPL Montana, also questioned the draft's use of a county-wide watershed designation rather than using hydrologic basins for categorization. Ms. Franz referenced the draft's language regarding basin closures pursuant to specific legislative enactment and asked why 85-2-319, MCA, the general basin closure statute, was not also included.
- 04:07:27 Barbara Hall, Clark Fork Coalition (CFC), expressed support for the mitigation exchange.
- 04:08:09 Abigail St. Lawrence, Montana Association of Realtors (MAR), said that exempt wells must be preserved and that MAR supports the current statutory exemption. Ms. St. Lawrence said that the science available does not indicate that elimination of the exemption, particularly those concerning household well use, would resolve any water shortages, to the extent that any exist. Ms. St. Lawrence distributed an executive summary prepared at MAR's request detailing water availability ([EXHIBIT 10](#)). Ms. St. Lawrence said that efforts to control development should be made directly rather than through water regulations.
- 04:11:26 Tara DePuy, Land Use Attorney, JPIA Montana Association of Counties (MACo), noted the diversity of water needs and echoed Ms. St. Lawrence's statements regarding control of subdivisions through the use of exempt wells. Ms. DePuy said that counties are already required to mitigate the impact of improper water use and that the draft would impose new requirements that may not coordinate with subdivision review. Ms. DePuy noted that the draft does not address the use of exemptions from subdivision review process, such as with family transfers and boundary line adjustments ([EXHIBIT 11](#)).
- 04:15:06 Tony Berget, Lincoln County Commissioner, said he could not speak for all of MACo but that he concurred with the last two speakers.

Opponents

None.

Committee questions and discussion

- 04:16:27 Rep. Hands asked Mr. Kolman how the decision was made to use a county-wide designation in the bill draft. Mr. Kolman said that he had drafted the bill according to the requests of its sponsor and deferred to Ms. Ziemer. Ms. Ziemer said it was done to simplify the interface between the water rights permitting and county planning departments. Rep. Hands asked Ms. Ziemer to respond to Ms. DePuy's comment regarding the proposed legislation's possible unintended consequences in eastern Montana. Ms. Ziemer said that mitigation exchanges would be limited to closed basins in fast-growing counties. Rep. Hands asked if there were any closed basins in eastern Montana in designated areas of growth. Ms. Ziemer said there are not.
- 04:20:22 Rep. McNutt asked if the bill's requirements regarding controlled groundwater areas were mutually exclusive.
- 04:21:02 Mr. Kolman said that the draft included three requirements that must be met for designation as a closed groundwater area. Ms. Ziemer clarified which counties met the designation.
- 04:22:15 Rep. McNutt said it appeared that the proposal would flip the controlled groundwater area application cost from developers to realtors. Ms. Ziemer said he was correct in saying that the bill would alleviate some cost for developers of subdivisions by front-loading the water exchange process. Rep. McNutt recalled that last interim a mitigation exchange program was investigated and one aspect of such programs that the investigation made clear was their great expense. Rep. McNutt said front-loading does not mitigate cost. Rep. McNutt questioned the assumption that closed basin aquifers were always to blame for shortages. Ms. Ziemer said that the financial burden would be lifted for those areas with the controlled groundwater area designation. Rep. McNutt asked if people were actually being harmed by the arduousness of establishing a controlled groundwater area. Ms. Ziemer said that the standards in the statute are not a good fit with hydrologic evidence.
- 04:29:31 Sen. Hamlett asked Ms. Ziemer if she opposed including more than one county in the bill's language regarding classification of a watershed. Ms. Ziemer said she did not object to doing it along watershed boundaries and said that 85-2-319, MCA, should also be included in the draft's list of controlled groundwater areas.

Information (affected agencies, entities)

- 04:31:10 Tim Davis, DNRC, said that the DNRC had not taken a position on this bill.

LC 8001 - Require public water and sewer in certain subdivisions (EXHIBIT 12)

Public Comment

- 04:32:31 Dustin Stewart, Montana Building Industry Association (MBIA), said his constituency was not especially excited about this draft and preferred the status quo, but that they could live with it. Mr. Stewart said the bill prevented large subdivisions from avoiding the permitting process.
- 04:35:21 Steve Kilbreath, DEQ's Public Water and Subdivision Section, noted that the program had not approved any new subdivisions with public water supplies since 2008.
- 04:36:28 Ms. DePuy, JPIA MACo, asked if local governments had the expertise to evaluate public water or sewer systems.
- 04:38:18 Mr. Youngberg, Montana Farm Bureau (MFB), said he thought counties had the ability to put in public water systems.
- 04:39:07 Ms. St. Lawrence, MAR, said that counties already have the authority to make certain requirements regarding water systems and expressed disapproval of the draft's arbitrary numbers regarding such requirements.

Committee questions and discussion

- 04:41:01 Rep. Hands asked Mr. Stewart if the draft's arbitrary limit of 30 lots did not allow for a new loophole, as many subdivisions are done in phases. Mr. Stewart said that if subdivisions were being completed in phases they would not count as they would be on the same plat.
- 04:43:00 Rep. McNutt asked Ms. DePuy if counties have the expressed authority to regulate water systems. Ms. DePuy said that she did not know for sure, as counties interpret 76-3-511, MCA, differently.

LC 8002 - Reduce exempt well rate and volume (EXHIBIT 13)

Public Comment

- 04:45:56 Mr. Stewart, MBIA, noted that few groups have expressed concern over the gallons per minute specified in statute, rather volume is their concern.
- 04:48:15 Ms. Evans, SWRC and Association of Gallatin Agricultural Irrigators (AGAI), said that a change to statute would not be effective without enforcement.
- 04:49:12 Holly Franz, PPL MT, questioned the draft's volume limitation of "one acre consumed."
- 04:49:50 Ms. Ziemer, TU, said current statute limits diversions to 10 acre feet and that this draft would increase the amount of water lost.

04:50:51 Ms. St. Lawrence, MAR, echoed Mr. Stewart and Ms. Evans, and said watering is made more difficult without an expensive cistern and pump.

Committee questions and discussion

04:51:53 Rep. McChesney commented that WPIC must be careful not to lose sight of the issue and that whatever is done must protect senior water rights and be supported by scientific data.

04:52:55 Rep. Connell said use of exempt wells is not limited exclusively to subdivisions.

04:54:54 Sen. Hamlett asked Ms. Thigpen if stockwater use is limited when drilling exempt wells. Ms. Thigpen said she would find out. Mr. Davis pointed to page 5 of the draft, which contains a separate exemption for livestock use. Mr. Kolman said that Sen. Hamlett may be referring to a decision out of Washington.

LC 8003 - Limit exempt appropriation in confined aquifers (EXHIBIT 14)

Public Comment

04:57:01 Ronda Wiggers, Montana Water Well Diggers Association (MWWDA), reminded WPIC that testimony in regard to exempt wells had highlighted the desire not to use revisions to subvert subdivision law or to control development. Ms. Wiggers compared the potential for exempt wells to interfere with senior water rights to teenage drivers potential to cause accidents. Ms. Wiggers said revisions would decrease the potential of injury to senior water rights users.

05:00:22 Mr. Kilbreath, DEQ, said that when his program reviews applications for subdivisions a major determination to be made is whether or not an aquifer is confined. Mr. Kilbreath recommended that the party in charge of defining whether or not an aquifer is "confined" be made explicit within the draft.

05:01:10 Ms. Evans, SWRC and AGAI, expressed difficulty in defining some of the draft's language, specifically where it describes an aquifer in which water is under pressure "significantly greater than atmospheric pressure." Ms. Evans asked why a user with an available aquifer that would not interfere with a senior water rights holder would not use that aquifer and avoid mitigation.

05:02:42 Mr. Davis, DNRC, said that DNRC agreed with Mr. Wheaton's comments that many confined aquifers are not completely confined.

Committee questions and discussion

05:04:12 Rep. Connell asked Mr. Wheaton if the areas in question were mapped adequately enough to establish guidelines. Mr. Wheaton said that many of the areas are mapped but that unknowns remain. Rep. Connell recounted his experience drilling a well in an unconfined aquifer in which the first 300 feet drilled went through clay and silt and asked Mr. Wheaton if this experience is

typical. Mr. Wheaton said that permafrost is the only perfect confining unit for an aquifer and explained a spectrum of confining materials.

05:09:45 Rep. Connell asked Ms. Wiggers what would happen if a well driller falsified a permit or feloniously entered information in a drilling permit that indicated they had gone through a strata to a confined aquifer. Ms. Wiggers explained that well drillers are licensed and tested by the Board of Water Well Contractors and could lose their license if found to be engaged in the aforementioned practices.

(Break)

LC 8004 - Limit exempt appropriation in subdivisions (EXHIBIT 15)

Public Comment

05:30:30 Ms. Evans, SWRC, said the intent of LC 8004 is to address the concentrated use of exempt wells which seem to be occurring in subdivisions by amending subdivision law. Ms. Evans said the draft addressed equality in permitting. Ms. Evans said that the draft dealt with the "chicken and egg scenario" in which permit applicants must pursue plat approval as well as the application process. Ms. Evans reminded the WPIC of scope and scale, and that assessments should be made on a basin-wide basis. She added, just because the water table is not lowered significantly does not mean someone's water usage is not affected. Ms. Evans said that under the draft it does not matter how many wells a user utilizes so long as they do not exceed 10 acre-feet per year.

05:36:03 Ms. St. Lawrence, MAR, said the bill draft requires the total amount of water appropriated by the subdivision be "likely to be less" than 10 acre feet per year. Ms. St. Lawrence said that such language entailing the determination by DNRC leaves room for discretion on the part of the department.

05:39:40 Mr. Youngberg, Montana Farm Bureau and SWRC, agreed with Ms. St. Lawrence that using the word "likely" might be problematic and noted that the draft did not take away the ability to do subdivisions.

05:41:04 Chris Saunders, Bozeman Assistant Planning Director, spoke on the challenges of tying water evaluation to the subdivision review process.

05:44:49 Ms. DePuy, JPIA MACo, said they could not support the bill. Ms. DePuy reminded the WPIC that it must be careful. Ms. DePuy said exempt divisions, which affect family transfers and boundary line adjustments of land, are not addressed by the bill draft. Ms. DePuy said a possible consequence of the legislation would be more minor subdivisions resulting in sprawl in the rural communities. Ms. DePuy said MACo is concerned with how the draft would affect park lands and fire protection features for subdivisions.

05:48:14 Mr. Kilbreath, DEQ Subdivision Section, spoke on discussions he had participated in regarding whether to put the new legislation in the Subdivision and

Platting Act or the Sanitation Act. Mr. Kilbreath endorsed putting it in Subdivision and Platting Act.

- 05:51:39 Mr. Davis, DNRC, suggested potential amendments to LC 8004 (**EXHIBIT 16**). Mr. Davis said DNRC intended to adopt rules for determining the method for pre-approval for subdivisions.
- 05:56:17 Ms. Ziemer, TU, expressed support for the approach taken by SWRC which relies on equal footing and permitting rather than adoption of the mitigation exchange. Ms. Ziemer requested the WPIC give thought to family transfers, noting that different counties deal with family transfers differently.
- 05:58:43 Ms. Hall, CFC, supported the approach taken by LC 8004. Ms. Hall said the draft would ensure larger concentrated groundwater uses are held accountable for water withdrawals.
- 06:01:19 Tony Berget, Lincoln County Commissioner, urged careful thought regarding exempt wells.

Committee questions and discussion

- 06:02:42 Rep. Connell asked Mr. Kilbreath to explain mixing zones parameters established by HB 28. Mr. Kilbreath said that HB 28 (2011) limited mixing zones to within the interior boundary of a subdivision and that 100 feet is the standard mixing zone size.
- 06:06:09 Rep. McNutt asked Ms. St. Lawrence if MAR could support development of the ideas contained in LC 8004 if the aforementioned changes were made. Ms. St. Lawrence said that Mr. Davis' amendments would address some of MAR's concerns but that MAR was concerned that the draft would take authority away from local governments and gives authority to the DNRC. Rep. McNutt asked her to take the issue to MAR and encourage stakeholders to get involved.

Next steps in exempt well study

Committee questions, discussion, and action on exempt well study and meetings

- 06:09:36 Mr. Kolman asked the WPIC how to proceed with regard to bill drafts.
- 06:10:30 Rep. McChesney said that LC 8004 seemed to be the draft of preference for a starting point and suggested it be considered.
- 06:11:06 Sen. Vincent said he had thought they would bring more than one draft forward to communities. Sen. Vincent said the only draft he was not interested in pursuing was LC 8000.
- 06:11:48 Rep. Connell said he would like to see concepts from LC 8003 and LC 8004 combined.

- 06:14:08 Rep. Hands expressed agreement with Rep. McChesney's comments regarding LC 8004. Rep. Hands noted that the draft did not contain a system for monitoring exempt wells and asked if such a system was needed.
- 06:15:03 Sen. Barrett agreed that the WPIC should proceed with LC 8003 and LC 8004.
- 06:15:19 Rep. McNutt said he would like to move forward with LC 8004 and receive stakeholder input. Rep. McNutt said that the WPIC may not have enough scientific data available to make determinations regarding contained versus uncontained aquifers.
- 06:17:25 Sen. Vincent urged that the WPIC keep as many options on the table as possible.
- 06:18:17 Sen. Hamlett asked if the WPIC should present all the drafts to the public.
- 06:19:11 Rep. McNutt said he did not see any interest from the WPIC in regard to LC 8000.
- 06:19:27 Sen. Hamlett said it did not hurt to receive public comment on the draft.
- 06:19:59 Mr. Kolman clarified that all the bill drafts would be worked on and brought before the public.
- 06:20:21 Sen. Vincent expressed interest in Mr. Wheaton's maps and asked for more data.
- 06:21:20 Sen. Barrett suggested bill draft language for confined aquifers.

Budget scenarios for out-of-Helena meetings, Joe Kolman, staff

- 06:22:01 Mr. Kolman detailed options for out-of-Helena meetings.
- 06:23:50 Sen. Vincent said putting all the meetings together is best and suggested the last meeting be held in Kalispell.
- 06:24:16 Sen. Hamlett asked the WPIC if three or four meetings would be necessary and to suggest other cities to visit. Sen. Hamlett said that Farmers' Union in Kalispell expressed interest in discussing water issues and asked Mr. Kolman if the meetings could not be coordinated around that meeting.
- 06:25:52 Rep. Hands asked for clarification whether or not a public meeting at the same time as their meeting was precluded.
- 06:26:10 Mr. Kolman asked WPIC to pick one or two weeks to begin scheduling meetings.
- 06:26:56 Sen. Barrett suggested the weeks of June 11 and June 18.
- 06:27:14 Rep. Connell agreed with Sen. Barrett.
- 06:27:23 Sen. Vincent and Rep. Hands noted possible conflicts.

- 06:28:53 Mr. Kolman restated the WPIC's intent to hold meetings the weeks of June 11 or June 18. Mr. Kolman addressed scheduling conflicts regarding the WPIC's July meeting and said it would be held in conjunction with the EQC's meetings.
- 06:32:03 Rep. McNutt said he had a conflict in July.
- 06:33:08 Mr. Kolman said coordination with EQC was not necessary and that WPIC could meet the week before EQC.
- 06:34:00 Sen. Hamlett said it was not a conflict to him.
- 06:34:22 Mr. Kolman restated the WPIC's intent to meet July 12 and 13, 2012.

Administrative matters

- 06:35:10 Mr. Kolman distributed a fiscal note related to SB 299 and information regarding the U.S. Forest Service Youth Conservation Corps ([EXHIBIT 17](#)) ([EXHIBIT 18](#)).

Instructions to staff

- 06:36:05 Sen. Hamlett asked Mr. Metesh for a presentation on avulsion at WPIC's July meeting.
- 06:36:49 Rep. McChesney gave a suggestion regarding the order of future meetings.

Public comment on any matter not contained on the agenda and that is within the jurisdiction of the WPIC

- 06:38:14 None.

Adjourn

- 06:38:36 The WPIC adjourned.

CI2244 2177mtxa.