



## Water Policy Interim Committee

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### 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  
TODD EVERTS, Staff Attorney  
HELEN THIGPEN, Staff Attorney  
KEVIN MCCUE, Secretary

# MINUTES

Approved January 10, 2012

September 14, 2011

Rm. 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.

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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. DEBBY BARRETT  
SEN. SHARON STEWART-PEREGOY  
SEN. CHAS VINCENT

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

### 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 2011-2012 work plan.

## **CALL TO ORDER AND ROLL CALL**

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

## **AGENDA**

### **RULE REVIEW AND AGENCY LITIGATION STATUS REPORT**

00:00:47 Ms. Thigpen, staff attorney, spoke about fracturing rules and said that the composition of fracturing fluid varies from company to company and sometimes from well to well. She pointed to the website "fracfocus.org" for further information. She also discussed DNRC rules implementing SB 103 (2011) and SB 128 (2011) and DEQ rules implementing HB 28 (2011), HB 89 (2011) and SB 9 (2011).

#### **Public Comment**

00:07:03 None

#### **Committee questions, discussion, and action, if any**

00:07:33 Rep. McNutt commented on the meeting held in Sidney at which rules regarding fracturing were adopted.

### **EPA GUIDANCE ON CLEAN WATER ACT -- Helen Thigpen, Staff Attorney**

00:08:18 Ms. Thigpen gave an update and the U.S. Clean Water Act was described.

#### **Public Comment**

00:17:11 None.

#### **Committee questions, discussion, and action, if any**

00:17:17 None.

## **CLARK FORK RIVER BASIN TASK FORCE UPDATE (85-2-350, MCA)**

### **Gerald Mueller, task force facilitator**

00:17:29 Gerald Mueller, task force facilitator for the Clark Fork River Basin Task Force, presented a PowerPoint detailing the Task Force's annual report (**EXHIBIT 1**).

### **Public Comment**

00:32:55 Jeff Tiberi, Montana Association of Conservation Districts, said that the WPIC should use knowledge of conservation districts in regard to storage.

### **Committee questions, discussion, and action, if any**

00:34:03 Rep. Hands asked about Task Force recommendations and the process for implementation. Sen. Hamlett answered that the Environmental Quality Council could be utilized.

## **WATER USE REQUIREMENTS**

### **Overview -- Tim Davis, DNRC**

00:34:57 Tim Davis, Water Resources Administrator, DNRC, referred to the table included in the WPIC mailing titled "General Water Use Requirements" (**EXHIBIT 2**).

### **Public Comment**

00:40:38 None

### **Committee questions, discussion, and action, if any**

00:40:45 Rep. Hands asked about "consumed versus diverted" volume and whether those figures could be provided. Mr. Davis responded that he would provide them.

00:41:23 Rep. McNutt asked if these are standard assumptions and from where the numbers in the table originate. Mr. Davis said they were standard assumptions used when processing an application and were based on industry standards.

(BREAK)

## **PREVIOUSLY DISCUSSED EXEMPT WELL OPTIONS**

### **Overview -- Joe Kolman, staff**

01:03:11 Mr. Kolman discussed a list of options for exempt wells that had been prepared by the work group from a previous WPIC. (**EXHIBIT 3**).

## Public Comment

01:13:06 Laura Ziemer, Trout Unlimited (TU), referred to the aforementioned options and expressed interest in combining different aspects to create new solutions.

## Committee questions, discussion, and action, if any

01:17:34 Rep. McNutt referred to the "General Water Use Requirements" and agreed that it would be a good guide for determining impact on water rights holders. He said that despite Montana's wealth of water, it was important to determine how much water is actually legally available to the state. He said it was now time to make decisions regarding exempt wells and suggested draft bills be prepared in order to get all the parties involved.

01:26:13 Rep. McChesney agreed with Rep. McNutt that it is time to act and said that HB 602 (2011) provided a mandate to address exempt wells. He asked Mr. Kolman for a review of HB 602.

01:27:02 Mr. Kolman gave a brief review of the genesis of HB 602.

01:29:15 Rep. Hands made a distinction between rulemaking and adoption.

01:30:03 Rep. Connell addressed bonding as one of the ways of addressing exempt wells and said recent changes have made bonding a poor choice.

01:31:21 Rep. McNutt said he was not suggesting taking this course of action in the private market but rather with the coal tax trust fund.

01:32:49 Sen. Barrett said that she did not favor taking action just because it felt like the right time to do so and asked how many calls were received last year regarding this issue. She said that she did not want to make a bad situation worse and favored taking a regional approach.

01:35:32 Rep. McNutt clarified that he was not suggesting a one-size-fits-all, statewide approach.

01:40:03 Sen. Stewart-Peregoy addressed two variables in regard to wells for subdivisions. First, she agreed that a comprehensive approach was needed but she also said that there may be a need for different approaches for different parts of the state.

01:42:50 Rep. McChesney referenced the report "Exempt Well Issues in the West" by Nathan Bracken of the Western States Water Council ([EXHIBIT 4](#)).

01:46:02 Rep. Hands expressed concern that not much public input had been expressed and that the drafting of legislation should come later in the process.

01:47:56 Sen. Hamlett observed that public comment should be expressed to the committee and would be to the benefit of all involved. He asked Mr. Kolman to

investigate calls made regarding exempt wells and said that the DNRC should have a list of wells. He then opened the floor to public comment.

- 01:50:59 Krista Lee Evans, Association of Gallatin County Irrigators (AGAI) and Senior Water Rights Coalition (SWRC), agreed that one size does not fit all in this instance. Ms. Evans said that the most important aspect of the issue to her constituents is equality in permitting and that most calls were regarding surface water.
- 01:56:36 Rhonda Wiggers, Montana Water Well Diggers Association (MWWDA), reported on her organizations' recent activities. Ms. Wiggers addressed the Bounds decision and suggested that the WPIC consult with Art Nelson of the Board of Water Well Contractors. She said that she was hopeful that as the WPIC heard the next report that they take note of the science. Finally, Ms. Wiggers pointed to the costs in terms of money and time involved in the permitting process.
- 02:01:49 John Youngberg, Montana Farm Bureau (MFB), agreed with using a regional approach and that changes should be applied to growth areas.
- 02:02:45 Steve Kilbreath, DEQ Subdivision Section Supervisor, reiterated the importance of exempt wells as a useful tool in certain areas of the state. Mr. Kilbreath said that the DEQ is in favor of the implementation of public water supplies to promote health and safety but that they were not seeing them used.
- 02:05:14 Joe Roberts, Montana Association of Realtors (MAR), said that his organization was vitally interested and looked forward to participation.
- 02:06:27 Tara DePuy, Montana Association of Counties (MACo), pointed to the diversity of needs in the state and reminded the WPIC that subdivisions were not the only entities responsible for creating exempt wells.
- 02:08:16 Dustin Stewart, Montana Building Industry Association (MBIA), said that the MBA was working on options to bring forward and that they were finding it difficult to create rules that addressed the science regarding the impact of exempt wells. Mr. Stewart said that the MBA wants the WPIC's legislation to have a narrow focus.
- 02:10:53 Kathleen Williams, a legislator representing Gallatin Valley and an exempt well owner, shared a story about her experiences defending senior water rights. Rep. Williams suggested that a proposal be crafted including items 4B, 4C and 4E from the "Exempt Well Options" and urged a visit to the Gallatin Valley.
- 02:15:54 Mike Murphy, Montana Water Resources Association (MWRA), recognized both the rights of senior water rights holders and also the importance of exempt wells to the state. He pointed to the impact of HB 40 (2009) on the DNRC's ability to go through the permitting process and said that more incentive is needed for the development community.

**Committee questions, discussion, and action, if any**

- 02:18:47 Rep. Connell asked Mr. Kilbreath to restate the numbers of subdivisions established in the last year, specifically concentrated lot developments as opposed to family transfers and such. Mr. Kilbreath said he has those numbers and can acquire numbers for family transfers.
- 02:21:44 Rep. McChesney asked Ms. Evans and Ms. Wiggers for written synopses of their testimony, which they said they would provide.
- 02:22:51 Sen. Barrett asked a question regarding Article IX, Section 3 of the Montana Constitution. Mr. Kolman said that the permit system was implemented after the Constitution's adoption.

**GROUND WATER INVESTIGATION PROGRAM - MBMG**

**Project updates -- John Wheaton**

- 02:25:07 John Wheaton, Senior Research Hydrogeologist, Montana Bureau of Mines and Geology (MBMG), gave a PowerPoint presentation detailing the MBMG's work ([EXHIBIT 5](#)).

**North Hills Groundwater Model -- Kirk Waren**

- 02:42:23 Kirk Waren presented a Power Point detailing Helena's North Hills Groundwater Models ([EXHIBIT 6](#)).

**Exempt well analysis options -- John Metesh**

- 03:02:11 John Metesh, Associate Research Hydrogeologist, MBMG, said that the purpose of the program is to provide the Committee all the necessary information and that the MBMG doesn't have a particular interest in a certain course of action. Mr. Metesh said that views of stream depletion have changed in recent years, aided by stream depletion modeling ([EXHIBIT 7](#)).

**Public Comment**

- 03:12:04 None.

**Committee questions, discussion, and action, if any**

- 03:12:18 None.

## ADMINISTRATIVE MATTERS

### Adoption of work plan - Mr. Kolman

- 03:12:40 Mr. Kolman gave an overview of the 2011-2012 WPIC Workplan. Out of town meetings were discussed ([EXHIBIT 8](#)).
- 03:15:28 Sen. Barrett expressed interest in using Mr. Metesh's findings along with visits.
- 03:16:23 Mr. Kolman reminded the committee of the 2012 final deadlines.
- 03:16:56 Sen. Hamlett asked if the WPIC wanted to have a meeting this year. Mr. Kolman spoke to the spacing and timeline of meetings for collecting public comment.
- 03:19:06 Rep. Connell urged the public to submit materials in a prompt manner and asked that Mr. Davis supply the WPIC with documentation of complaint calls.
- 03:20:42 Rep. Hands proposed a different direction than past interim committees and asked if the committee was interested in proposing legislation at an earlier date. Mr. Kolman clarified that bill drafts could be available by March.
- 03:22:34 Sen. Hamlett asked the committee about possible additions to the work plan.
- 03:22:49 Rep. McNutt reminded the committee of the Supreme Court's Trout Unlimited decision and the avulsion issue.
- 03:23:50 Rep. Hands asked to review the process for achieving consensus in regard to potential bills endorsed by the WPIC. Mr. Kolman reviewed the process and pointed to the committee rules.
- 03:25:35 Sen. Vincent expressed a desire to cover as much information as possible before bills are drafted.
- 03:26:24 Sen. Stewart-Peregoy said that it would behoove the committee to look at additional studies in order to make a more informed decision.
- 03:28:32 Rep. McNutt shared Rep. Hands' interest in developing a course of action but cautioned against drafting bills before the January meeting.
- 03:29:32 Sen. Barrett reminded the committee that there may be additional court decisions that need be addressed.
- 03:30:29 Rep. Hands asked if time could be set aside in January to outline ideas the WPIC would pursue.
- 03:31:42 Sen. Hamlett asked Mr. Kolman to provide the public's concerns in writing and to distribute them to the committee.

03:32:47 Rep. Hands reminded the committee that the less-experienced WPIC members do have experience that will inform them. Sen. Hamlett spoke of his past experiences on the WPIC and said he was interested in Ft. Peck's history.

03:36:01 Sen. Barrett said that Jay Weiner of the Reserved Water Rights Compact Commission could present in January in order to further inform the WPIC.

03:37:08 Rep. Hands asked if the January meeting could be extended from one to one and a half days. Mr. Kolman replied in the affirmative.

**Public Comment**

03:38:47 None.

**Committee discussion and action**

03:38:20 Rep. McNutt moved to adopt the 2011-12 WPIC work plan. The work plan was approved unanimously by voice vote.

**Review of final WPIC Rules - Mr. Kolman (EXHIBIT 9)**

03:39:01 Motion to adjourn.

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