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## Water Policy Interim Committee

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### 65th Montana Legislature

#### SENATE MEMBERS

PAT CONNELL--Chair  
JILL COHENOUR  
JON SESSO  
JEFFREY WELBORN

#### HOUSE MEMBERS

ZACH BROWN--Vice Chair  
BOB BROWN  
JOHN FLEMING  
CARL GLIMM

#### COMMITTEE STAFF

JASON MOHR, Lead Staff  
NADINE SPENCER, Secretary  
ERIN BILLS, Legal Staff

# MINUTES LOG

January 8, 2018  
Room172, Capitol Building  
Helena, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Please contact the Legislative Services Division at 406-444-3064 for more information.

### **COMMITTEE MEMBERS PRESENT**

SEN. PAT CONNELL, Chair  
REP. ZACH BROWN, Vice Chair

SEN. JILL COHENOUR  
SEN. JON SESSO

REP. BOB BROWN  
REP. JOHN FLEMING  
REP. CARL GLIMM

### **COMMITTEE MEMBERS EXCUSED**

SEN. JEFFREY WELBORN

## **STAFF PRESENT**

JASON MOHR, Lead Staff  
NADINE SPENCER, Secretary  
ERIN BILLS, Legal Staff

## **VISITORS' LIST (Attachment 1)**

## **AGENDA (Attachment 2)**

### **COMMITTEE ACTIONS**

The Water Policy Interim Committee (WPIC):

- Approved the minutes log from October 9 and 10, 2017.

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

00:00:04 Sen. Connell called the meeting to order at 10:06 a.m. The secretary called the roll. (Attachment 3) Sen. Welborn was excused. Sen. Connell invited Rep. Walt Sales, HD 69, to join the committee at the table as a visiting legislator.

### **Approval of Minutes**

#### **Motion/Vote**

00:02:07 Sen. Cohenour moved to approve the minutes log from October 9-10, 2017. The motion carried unanimously by voice vote of those present and voting.

00:02:32 Sen. Connell thanked staff for their efforts.

### **UPDATE FROM ENVIRONMENTAL QUALITY COUNCIL**

00:03:11 Joe Kolman, director, Legislative Environmental Policy Office, Legislative Services Division (LSD), said the Environmental Quality Council (EQC) will meet next week and provided information on the agenda.

#### **Committee questions and discussion**

00:12:59 Sen. Connell asked Mr. Kolman about the change in ownership when the Willow Creek Dam is transferred from the state.

00:13:30 Sen. Connell asked Mr. Kolman about the structural integrity and maintenance of the dam. Mr. Kolman redirected the question to Jan Langel, administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC).

00:15:13 Sen. Connell asked Mr. Langel if the discussion at the EQC meeting will include the steps necessary to resolve the impasse between the Willow Creek Water Users Association and the DNRC.

00:16:06 Rep. Z. Brown asked Mr. Kolman about the timeline for revisiting the funding model for aquatic invasive species and the potential need for legislation.

### **DEFINITION OF "DISTRIBUTION LISTS" (2-6-1017, MCA)**

00:17:54 Barbara Chillcott, attorney, DNRC, presented information on the provision under 2-6-1017, MCA, that prohibits the dissemination of a distribution list outside of an agency that prepares it and how the department is interpreting it. **(Exhibit 1)**

Public comment None

#### Committee questions and discussion

00:24:26 Sen. Connell asked Ms. Chillcott about public access to information available online from the DNRC database.

00:26:35 Sen. Cohenour asked Ms. Chillcott if the language change in the amendment was specific to information on water right holders.

00:28:34 Sen. Sesso asked Ms. Chillcott about who will be unable to obtain the information.

00:30:22 Recess

00:45:32 Reconvene

### **WATER RIGHT ADJUDICATION UPDATE (85-2-281, MCA)**

00:45:45 Jason Mohr, research analyst, LSD, said the committee will receive the water right adjudication update from the DNRC and the Montana Water Court.

00:46:11 John Peterson, bureau chief, Water Adjudication Bureau, DNRC, provided an update on the adjudication process since October. **(Exhibit 2)**

00:49:31 Hon. Russ McElyea, chief water judge, Montana Water Court, said the committee received information from the Water Court and discussed the decrees issued in 2016-17 that are still in an objection period. **(Exhibit 3)**

00:51:51 Mr. McElyea discussed the claim closings per month.

00:53:55 Mr. McElyea discussed compact status.

00:54:39 Mr. McElyea discussed efforts to resolve basin wide objections that were filed by tribal interests and by the federal government.

00:55:59 Mr. McElyea discussed the Water Court Adjudication Advisory Committee.

Public comment None

#### Committee questions and discussion

00:57:16 Sen. Cohenour asked Mr. Peterson about the effect of state budget cuts on adjudication.

00:58:31 Sen. Cohenour asked Mr. Peterson about loss of staff.

00:59:03 Sen. Sesso asked Mr. Peterson about the notices that were sent out and the current process.

01:01:27 Sen. Sesso asked Mr. Peterson about the number of claims affected.

01:04:38 Rep. Z. Brown asked Mr. Peterson about the number of new filings the department has received since HB 110 (2017).

01:05:00 Rep. Z. Brown asked staff to follow up with the DNRC and the Water Court on the number of new filings for the WPIC meeting in May or July. Mr. Peterson said the number is updated quarterly.

- 01:06:31 Sen. Connell commented on exempt well issues and the necessity of the DNRC to send out the notices.
- 01:08:21 Sen. Connell asked Mr. McElyea about the objection process.

**UPDATE FROM ADJUDICATION ADVISORY COMMITTEE**

- 01:19:41 Holly Franz, member, Water Court Adjudication Advisory Committee, provided an update on suggested changes to the adjudication process for final decrees. **(Exhibit 4)**

Public comment None

**Committee questions and discussion**

- 01:27:34 Sen. Cohenour asked Ms. Franz about the legislative proposals that the advisory committee decided not to move forward.
- 01:29:22 Rep. Z. Brown asked Mr. McElyea why the committee decided not to move forward with the proposal to decouple state based rights in final decrees. He also requested that the WPIC receive the minutes after the advisory council meetings.
- 01:38:26 Rep. Z. Brown said the proposal to amend 85-2-235, MCA was an attempt by the advisory committee to create a deadline. Mr. McElyea agreed.
- 01:39:21 Rep. Z. Brown asked Mr. McElyea about WPIC members attending advisory committee meetings.
- 01:41:32 Sen. Connell said that none of the proposed changes will affect the ability of a water right holder to subsequently amend or change their water right. Ms. Franz agreed.
- 01:42:48 Sen. Connell asked Ms. Franz if the proposed draft legislation can be ready for the WPIC meeting in March. Ms. Franz said yes.
- 01:44:06 Recess for lunch at 11:50 a.m.
- 02:56:03 Reconvene at 1:02 p.m.

**IMPLEMENTATION OF STATE WATER PLAN (85-1-203, MCA)**

- 02:56:33 Paul Azevedo, bureau chief, Water Management Bureau, DNRC, presented an update on water storage and the Upper Missouri basin study.
- 02:58:58 Mr. Azevedo said committee members received a copy of the State Water Plan **(Exhibit 5)** and that the information is distilled from four individual basin specific plans. He said it contains 68 recommendations for improving water management and utilization of the state water resources over the next 20 years.
- 03:00:41 Mr. Azevedo discussed reservoir storage and natural water storage.
- 03:07:44 Mr. Azevedo discussed the Upper Missouri basin study.
- 03:10:22 Mr. Azevedo discussed progress made on the need for more water information.
- 03:13:03 Mr. Azevedo discussed progress made on drought preparedness and planning efforts.
- 03:13:37 Mr. Azevedo said a Montana Water Summit is scheduled for March 6 - 7.

Public comment None

Committee questions and discussion

- 03:14:43 Sen. Connell asked Mr. Azevedo about the difference between climate change and drought.
- 03:16:49 Sen. Connell asked Mr. Azevedo if the amount of water from mountain snow melt is the same, but that it is occurring earlier in the year.
- 03:18:44 Sen. Connell asked Mr. Azevedo about climate change and the impact on natural water storage and reservoir storage.

**U. S. FOREST SERVICE WATER RESERVATIONS REPORT (85-20-1401, MCA)**

- 03:19:59 Mr. Mohr said the committee received the water reservations report from the DNRC related to the U.S. Forest Service (USFS) water compact. **(Exhibit 6)**
- 03:20:42 Arne Wick, supervisor, Compact Implementation Section, Water Resources Division, DNRC, discussed the department's biennial report.
- 03:24:14 Dave Schmid, deputy regional forester, Northern Region, USFS, discussed the water rights compact and working with the state.

Public comment None

Committee questions and discussion

- 03:29:33 Sen. Connell asked Mr. Schmid if the USFS compact prevents future potential use of the water under a special use permit and if there have been any applications since the process was initiated.

**CLARK FORK AND KOOTENAI RIVER BASINS COUNCIL**

- 03:31:48 Erin Ferris-Olsen, coordinator, Montana Watershed Coordination Council, said the committee received a letter from the Clark Fork and Kootenai River Basins Council. **(Exhibit 7)** She provided an updated version of the letter **(Exhibit 8)** and gave a update on the council.

Committee questions and discussion

- 03:36:36 Sen. Connell thanked Ms. Ferris-Olsen and said the WPIC meeting in March will be scheduled for one day so that committee members can participate in the Montana Water Summit.
- 03:37:39 Rep. Z. Brown asked Ms. Ferris-Olsen about adding water storage as a formal role of the council's mission.
- 03:39:44 Sen. Connell said he agreed with Rep. Z. Brown's suggestion and commented on climate change and the need for late season water storage.
- 03:41:21 Sen. Sesso asked Ms. Ferris-Olsen about integrating the Upper Clark Fork Steering Committee's work with the Clark Fork Basin Council's work.

Public comment None

- 03:44:04 Recess
- 04:05:06 Reconvene

### **FWP COMMENT ON DEFINITION OF "DISTRIBUTION LISTS"**

04:06:02 Bill Schenk, attorney, Department of Fish, Wildlife, and Parks (FWP), commented on the distribution list statute.

Public comment None

#### Committee questions and discussion

04:08:34 Sen. Cohenour said the WPIC should continue to discuss the issue and consider potential future legislation.

04:09:22 Sen. Connell commented on the cost for separate distributions lists and asked staff to convey the message to the EQC staff.

### **INSTREAM LEASING REPORT (85-2-426, MCA)**

04:10:09 Mr. Schenk provided copies of FWP's instream flow water right leasing report for 2016 and 2017. **(Exhibit 9)**

04:12:52 Mr. Schenk discussed program highlights.

04:14:10 Mr. Schenk discussed FWP's leasing program.

Public comment None

#### Committee questions and discussion

04:17:30 Rep. Z. Brown asked Mr. Schenk how the leasing proposal affects Muddy Creek.

04:20:07 Rep. Z. Brown asked Mr. Schenk if the focus of the lease in the Teton River watershed is for warm water fisheries.

04:21:27 Sen. Cohenour asked Mr. Schenk about public objections to leasing.

04:23:20 Sen. Cohenour asked Mr. Schenk about opportunities for fishing if the program did not exist.

04:25:22 Sen. Connell asked Mr. Schenk about the exclusion of Painted Rocks Reservoir and Lake Como Dam from the report.

04:27:34 Sen. Connell asked Mr. Schenk to provide a report on other projects that affect leases.

### **FLASH DROUGHT OF 2017**

04:29:01 Mr. Mohr provided an introduction to the presentation.

04:29:59 Michael Downing, Water Planning Section supervisor, Water Resources Division, DNRC, gave a PowerPoint presentation on the 2017 drought. **(Exhibit 10)**

Public comment None

#### Committee questions and discussion

04:50:04 Sen. Connell asked Mr. Downing to provide a summary report for the WPIC meeting in May.

04:50:31 Sen. Cohenour asked Mr. Downing if the DNRC is working with other committees on changes in the statute. Sen. Cohenour said she recommends that the WPIC work with the department on changes. Sen. Connell agreed.

### **WILDFIRES OF 2017: BAER REPORTS**

04:52:25 Mr. Schmid discussed the 2017 fire season and provided an update on what the USFS is doing around the burned areas. He said that the USFS uses the Burned Area Emergency Response Program (BAER) following fires that exceed 500 acres.

04:59:06 Mr. Schmid provided a summary of the type and extent of the work.

### **Public comment**

05:02:42 Julia Altemus, Montana Wood Products Association

05:04:40 Elena Evans, Montana Association of Conservation Districts ([Exhibit 11](#))

### **Committee questions and discussion**

05:07:21 Rep. Glimm asked Mr. Schmid about the green restoration program and how it works with the salvage program.

05:09:48 Rep. Glimm asked Mr. Schmid about the reason why the USFS does not want to scale back the green restoration program.

05:11:35 Rep. Glimm asked Mr. Schmid to address the difference between the proposal to harvest 4% of the burned area versus 10% and the ability to get more salvage material into the mills before it loses value.

05:13:56 Rep. Glimm asked Ms. Altemus to respond to the same question.

05:16:02 Rep. B. Brown asked Ms. Altemus about the timber industry and future expansion.

05:17:24 Sen. Connell said the DNRC advertised its first salvage sale from the Lolo Peak fire in early December.

05:17:54 Sen. Sesso asked Mr. Schmid about salvaging black timber, the reason why it is litigated, and if anything can be done.

05:21:49 Sen. Sesso asked Ms. Altemus the same question.

05:22:54 Sen. Sesso asked if there have been any studies done that show whether or not taking black timber off of forested lands does or does not have an adverse effect on water quality and water resources. Ms. Altemus explained how projects are mitigated for environmental concerns.

05:25:50 Sen. Cohenour asked Ms. Altemus about best management practices that would help to ensure that the soil contains organic matter necessary for further growth.

05:27:08 Sen. Cohenour asked Ms. Altemus if contracts to remove black timber include reforestation.

05:27:58 Sen. Cohenour asked Ms. Evans about best management practices that ensure that the soil contains organic matter.

05:28:45 Ms. Evans redirected the question to Ann McCauley, Montana Association of Conservation Districts.

05:29:29 Sen. Cohenour asked Mr. Schmid about best management practices.

05:31:01 Sen. Cohenour asked Mr. Schmid if the USFS includes reforestation in its assessments.

05:32:04 Sen. Connell asked Ms. Evans if conservation districts have received reports on hydrophobicity from the fires. Ms. Evan said she can provide the committee with the burn severity report that was done by the Bureau of Land Management.

05:34:44 Sen. Connell asked Ms. McCauley for the definition of "ash cap" or hydrophobicity.

05:36:40 Sen. Connell asked Ms. McCauley about the failure of seeds to germinate in pure ash cap.

05:37:41 Sen. Connell commented on the effect of forest fire in a watershed.

05:38:33 Sen. Connell asked Mr. Schmid about efforts by the USFS to reevaluate its vegetative management plans for forests in light of the effect of climate change on fire behavior.

05:42:08 Sen. Connell commented on the importance of water for agriculture and recreation in the state and his concern regarding the flow of water when it is impacted by fire. He said USFS management is essential to the water that the people in the state need to make a living. Mr. Schmid said the agency takes it stewardship responsibilities very seriously.

05:43:53 Sen. Sesso asked Mr. Schmid about past litigation and if the USFS is better prepared to address environmental concerns with future projects.

**RECESS FOR THE DAY**

05:48:44 With no further business before the committee, Sen. Connell recessed the meeting at 3:55 p.m.

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