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Water Policy Interim Committee

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 9, 2018
Room 172, 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):

- Voted to send a letter to the Board of Environmental Review supporting the proposed rules on the variance portion of SB 325;
- Voted to continue its informal objection to the implementation of the Department of Natural Resources and Conservation administrative rule (MAR Notice No. 36-22-196);
- Voted to schedule the next WPIC meeting for one day only on March 5;
- Voted to tour the Tintina Black Butte Copper Mine Project during the May meeting.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Connell reconvened the meeting at 8:31 a.m. The secretary noted the roll. **(Attachment 3)** Sen. Welborn and Rep. Z. Brown were excused.

IMPROVEMENTS TO MONTANA'S WATER QUALITY: FOLLOW UP ON HELENA VALLEY NUTRIENT LOAD

00:00:52 Jason Mohr, research analyst, Legislative Services Division (LSD), provided an introduction to the report completed by the Department of Environmental Quality (DEQ) following the WPIC's water tour of the Helena Valley in July. **(Exhibit 1)**

00:02:03 Tim Davis, administrator, Water Quality Division, DEQ, discussed the report on nutrient pollution in the Lake Helena watershed.

Public comment None

Committee questions and discussion

00:08:42 Sen. Sesso asked Mr. Davis about setting the limit for the total maximum daily load (TMDL) for the amount of pollutant that needs to be removed from a body of water and if the department looks at how well it is doing after the pollutant has been reduced.

00:12:36 Sen. Sesso asked Mr. Davis if an effort is made to acknowledge the reduction in pollution for site-specific standards.

00:15:34 Sen. Connell welcomed Rep. Jim Keane, HD 73, to the meeting.

00:16:02 Sen. Connell asked Mr. Davis about water collection data on Lake Helena prior to 1990.

00:17:10 Sen. Connell asked Mr. Davis to provide a graph showing the phosphorus and nitrogen levels over time. Sen. Cohenour said she recommends doing five-year increments so it matches the five-year permitting cycle.

- 00:19:44 Sen. Connell said the DEQ has been a partner in trying to improve the water quality throughout the state and that he appreciates the cooperative effort.
- 00:20:10 Sen. Cohenour commented on working with municipalities and helping people throughout the state.
- 00:20:48 Rep. Glimm gave his recommendations for information to include on the graph.
- 00:21:40 Rep. Fleming asked Mr. Davis about managing for improvements at wastewater treatment plants to meet water quality standards.

IMPLEMENTATION OF SB 325 (REVISE PROCESS FOR ADOPTING WATER QUALITY REGULATIONS (2015))

- 00:24:25 Mr. Davis said the DEQ went before the Board of Environmental Review to request that they initiate rulemaking on the variance portion of SB 325. **(Exhibit 2)**
- 00:26:42 Mr. Davis said the Board of Environmental Review will hold a public hearing on January 26 before taking action on the proposed rules.
- 00:27:23 Mr. Davis presented an example of how Part 1 and Part 2 of SB 325 could apply to Silver Bow Creek. **(Exhibit 3)**

Public comment

- 00:34:57 Rep. Jim Keane, HD 73
- 00:42:59 Alan Olson, executive director, Montana Petroleum Association
- 00:46:29 Tim Burton, executive director, Montana League of Cities and Towns

Committee questions and discussion

- 00:47:49 Rep. B. Brown asked Mr. Davis about the recommendation from Mr. Olson to change the word "may" to "shall" or "must" and about using two years of data instead of five years.
- 00:49:51 Sen. Sesso commented on the variance process and asked Mr. Davis about adding language regarding the renewal procedure.
- 00:55:33 Sen. Sesso asked Mr. Davis about Part 1.
- 00:58:48 Sen. Sesso asked Mr. Davis if there is a hierarchy in the relationship between Part 1 and Part 2.
- 01:03:37 Sen. Sesso commented on implementation of the law and encouraged the WPIC to support promulgation and finalization of the rules.
- 01:05:41 Rep. Glimm asked Mr. Davis about copper in the drainage.
- 01:08:56 Rep. Glimm asked John Metesh, state geologist, Montana Bureau of Mines and Geology (MBMG) for his opinion about copper in the drainage.
- 01:14:01 Sen. Cohenour asked Mr. Davis about long-term implementation of the rule. Mr. Davis said he recommends that the WPIC submit its comments on renewals to the department.
- 01:15:59 Davis said he recommends that the WPIC submit its comments on renewals to the department.
- 01:16:32 Sen. Connell asked Mr. Davis about the evaluation done by DEQ on whether a variance from water quality standard under Part 2 could apply to Butte Silver Bow.
- 01:19:22 Sen. Connell opened discussion on committee action.

Motion

01:20:42 Sen. Sesso moved that the WPIC submit a letter to the Board of Environmental Review supporting promulgation of the proposed rules and to consider the public comment heard at the meeting today.

Discussion on the Motion

01:23:24 Sen. Connell

01:23:37 Sen. Sesso

01:23:46 Mr. Mohr

01:24:01 Sen. Sesso

01:24:32 Sen. Connell

01:24:41 Rep. Z. Brown entered the meeting at 9:56 a.m.

01:25:42 Mr. Mohr

01:25:54 Erin Bills, legal staff, LSD

01:26:10 Sen. Connell

01:26:25 Ms. Bills

01:26:32 Rep. Glimm

01:26:51 Ms. Bills

01:27:03 Sen. Connell

Vote

01:27:41 The motion carried unanimously by voice vote. Sen. Welborn was excused.

01:28:01 Rep. Keane thanked the WPIC and said he supports its decision.

01:29:32 Recess

01:42:06 Reconvene

Public comment on Helena Valley nutrient load

01:42:15 Sen. Connell

01:42:54 Mr. Burton

01:46:06 Sen. Connell opened committee questions and discussion.

01:46:16 Sen. Cohenour asked staff if Mr. Burton's comment needs to be included in the letter to the Board of Environmental Review. Sen. Connell said it is a separate subject from the rule.

STUDY OF EXEMPT GROUNDWATER WELLS

01:47:14 Mr. Mohr said the study of exempt groundwater wells is divided into four parts and provided an introduction to each part.

Groundwater Wells and the Differences Between Confined and Dispersed Aquifers

01:49:14 Mr. Metesh presented a PowerPoint presentation on confined aquifers and unconfined aquifers. **(Exhibit 4)**

01:58:37 Mr. Metesh provided some examples of aquifers from around the state and said the information can be found in the publication *Principle Aquifers of Montana*. **(Exhibit 5)**

Permit and Exemption Data 2010-2017

- 02:18:28 Millie Heffner, Water Rights Bureau chief, Department of Natural Resources and Conservation (DNRC), said the data provided is information the WPIC requested at its last meeting. **(Exhibit 6)**
- 02:24:33 Ms. Heffner asked Rep. Glimm several questions clarifying the information he requested.

Public comment None

Committee questions and discussion

- 02:30:24 Sen. Cohenour asked Ms. Heffner to provide additional information regarding permit data and averages per year.
- 02:32:10 Rep. Z. Brown asked Ms. Heffner if data is available on a county-by-county basis for specific lots. He asked staff to contact the Montana Association of Counties to find out if data is available for a specific county. Mr. Mohr said a similar request was made at the WPIC meeting in October regarding the effect of the ruling. He said he contacted Lewis and Clark and Gallatin Counties and will ask them if they can provide the information.
- 02:35:01 Rep. Z. Brown asked Ms. Heffner about the difference between domestic and multiple domestic wells and between lawn and garden use.
- 02:37:07 Rep. Walt Sales, HD 69, asked Ms. Heffner to provide information on other uses under the provisional permit data. Ms. Heffner said she will.

Suggestions for HB339

- 02:38:50 Laura Ziemer, senior counsel and water policy advisor, Trout Unlimited (TU), provided information on TU's exempt well legislative proposal **(Exhibit 7)** and gave a PowerPoint presentation on TU's buffer zone concept. **(Exhibit 8)**
- 02:50:48 Sen. Connell asked Ms. Ziemer to provide a copy of the PowerPoint to staff.

Public comment

The following individuals commented on and provided suggestions for HB339:

- 02:51:33 Andrew Gorder, legal director, Clark Fork Coalition **(Exhibit 9)**
- 02:57:24 Mr. Burton, Montana League of Cities and Towns
- 02:58:57 Krista Lee Evans, Senior Water Rights Coalition and Association of Gallatin Agricultural Irrigators
- 03:00:16 Steve Candler, CEO, Gallatin Association of Realtors
- 03:05:30 Abigail St. Lawrence, Montana Building Industry Association
- 03:06:37 Sen. Connell said the committee will hear from the DNRC and the WPIC legal staff before lunch followed by committee discussion after lunch.
- 03:07:18 Rep. Z. Brown asked about committee questions on the presentation by TU. Sen. Connell opened committee questions and discussion.

Committee questions and discussion

- 03:08:08 Rep. B. Brown asked Mr. Candler to submit a copy of his testimony. **(Exhibit 10)**
- 03:08:38 Sen. Sesso asked Ms. Ziemer about the buffer zone and how it could be implemented.
- 03:10:48 Sen. Sesso asked Mr. Gorder the same question.

03:12:29 Sen. Sesso asked Mr. Candler about his proposal to separate land use planning with the exempt well discussion.

03:14:04 Sen. Sesso asked Mr. Candler for his perspective on the buffer zone concept.

03:15:42 Sen. Sesso asked John Tubbs, director, DNRC, about the buffer zone concept.

03:18:57 Rep. Sales asked Mr. Tubbs about the information provided by MBMG on stream depletion zones.

03:20:13 Rep. Sales asked Mr. Metesh about the information on stream depletion zones.

03:26:34 Rep. Z. Brown asked Mr. Gorder about applying the principles he outlined in his letter to Ms. Ziemer's proposal and HB 339. Mr. Gorder said he will prepare a memo for the committee with the information. Rep. Z. Brown requested that the information be available for the next WPIC meeting.

03:29:06 Rep. Z. Brown asked Mr. Candler about his proposal for a capital improvement program.

03:30:04 Rep. Z. Brown asked Mr. Candler about reaching out to other stakeholders and providing a framework outlining his concept for the WPIC meeting in March. Mr. Candler said he will also provide funding alternatives.

03:31:41 Rep. Z. Brown asked Mr. Tubbs about structuring a policy concept dealing with an unconfined aquifer.

03:35:22 Rep. Z. Brown asked Mr. Tubbs to clarify his comment regarding exempt wells and the issue of overall volume and location.

03:38:10 Rep. Z. Brown asked Mr. Tubbs to provide his perspective on why controlled groundwater areas and stream depletion zones are rarely utilized.

03:40:39 Sen. Connell commented on a stream depletion zone on Rye Creek.

03:41:29 Mr. Tubbs said that data may be able available at DEQ for information prior to subdivision review.

03:41:55 Rep. Glimm said the lawsuit and the Supreme Court decision did not deal with a constitutional issue.

03:42:37 Sen. Cohenour commented on using a local planning process.

03:46:23 Sen. Connell said the committee will recess and continue its discussion after lunch.

03:46:57 Recess for lunch at 12:18 p.m.

05:16:40 Reconvened at 1:48 p.m.

Proposed DNRC Rules (MAR Notice No. 36-22-196)

05:17:17 Erin Bills, legal staff, LSD, provided a review of administrative rules and the affect of controlled groundwater areas and stream depletion zones on exempt wells. **(Exhibit 11)**

05:28:39 Ms. Bills discussed the informal objection made by the WPIC at its meeting in October to the implementation of the Department of Natural Resources and Conservation administrative rule (MAR Notice No. 36-22-196). **(Exhibit 12)**

05:30:39 Ms. Heffner said that the DNRC forwarded the comments it received on the proposed rule to the WPIC and said the department has drafted responses to the comments and is in the process of an internal review. She commented on the necessity for the proposed rule.

Public comment None

Committee questions and discussion

- 05:32:35 Rep. Glimm asked Mr. Tubbs about the department's review of the comments it received on the rule.
- 05:34:39 Rep. Glimm commented on sustaining the committee's objection to the rule.
- 05:36:28 Sen. Cohenour said she does not support continuing the informal objection and asked staff about a provision in the Montana Administrative Procedure Act (MAPA) to allow the committee to do a formal objection. She said the committee needs to put its efforts into working on legislation that will find a compromise for all of the people in the state.
- 05:40:29 Rep. Sales asked Mr. Tubbs about the rule and the criteria used to determine whether a project is a combined or single appropriation.
- 5:45:21 Sen. Cohenour asked Mr. Tubbs about the current rules the department is working under.
- 05:46:24 Sen. Connell asked staff about information posted on the Secretary of State's website regarding the rule.
- 05:48:28 Rep. Z. Brown asked Ms. Bills about the timeline for the rulemaking process if the committee continues its informal objection.
- 05:49:49 Sen. Connell commented on the exempt well issue and said he supports the committee's continued informal objection to the rule.

Motion

- 05:54:20 Rep. Glimm moved that the WPIC continue its informal objection to implementation of the rule.

Discussion on the Motion

- 05:54:39 Rep. Z. Brown
- 05:56:01 Sen. Cohenour
- 05:57:22 Rep. B. Brown

Vote

- 05:57:28 The motion carried 4-3 by roll call vote. Sen. Cohenour, Sen. Sesso, and Rep. Fleming voted no. Sen. Welborn was excused. ([Attachment 4](#))
- 05:58:18 Sen. Connell asked staff to contact the Secretary of State so that information on its website does not provide misinformation to the public regarding the current rule. He commented on next steps for the March meeting.

STATUS OF FEDERAL FUNDING FOR WATER-RELATED PROGRAMS IN STATE GOVERNMENT

- 05:59:35 Mr. Mohr said in its work plan the WPIC identified federal funding and possible changes to its recent or historical levels and how those changes might affect water programs for state agencies in Montana.
- 06:00:44 Jan Langel, administrator, Water Resources Division, DNRC, discussed reauthorization of federal funding and concerns on how it will effect some of the department's programs.

06:08:14 Tim Davis, DEQ, discussed the uncertainty for federal funding and its effect on the department's ability to plan for the future.

Public comment None

Committee questions and discussion

06:09:43 Rep. Z. Brown asked Mr. Davis about the State Revolving Fund program and funding for the 319 grant program.

06:11:08 Rep. Z. Brown asked Mr. Davis what the effect would be in Montana if the 319 grant program funding is eliminated.

06:12:19 Sen. Connell asked Mr. Langel about the loss of stream gauges and the effect it has on the ability to determine the impact of wildfires.

06:14:03 Sen. Connell commented on stream gauge information obtained following the 2000 fires in the Bitterroot and said he recommends that the DNRC contact the U.S. Forest Service to provide assistance with maintenance and expansion of some of the stream gauges to monitor impacts from the 2017 wildfires.

06:16:14 Rep. Glimm asked Mr. Langel about the effect of the loss of federal funding for floodplain mapping. Mr. Langel redirected the question to Steve Story, Water Operations Bureau chief, DNRC.

06:19:42 Sen. Sesso asked Mr. Story about the status of the National Flood Insurance program and the benefit for state participation.

06:22:47 Sen. Sesso asked Mr. Story if the federal government reaches out to states regarding changes that would make the program work better.

THE HISTORY AND FUTURE OF FEDERAL WATER STORAGE IN MONTANA

06:24:07 Mr. Mohr said in its work plan the WPIC requested regular reports from federal agencies on water issues and will hear from the U.S. Bureau of Reclamation.

06:24:53 Steve Davies, area manager, Montana Field Office, U.S. Bureau of Reclamation, gave a PowerPoint presentation on its Montana area projects. **(Exhibit 13)**

Public comment None

Committee questions and discussion

06:47:23 Rep. Sales asked Mr. Davies about legal challenges on the lower Yellowstone River project and the impact on diversions for water users and about the future.

06:48:48 Sen. Cohenour asked Mr. Davies about federal budget concerns for staffing projects.

06:53:02 Rep. Fleming asked Mr. Davies about the bureau's relationship with the Flathead Irrigation Indian Project.

06:53:39 Sen. Connell asked Mr. Davies about high hazard dams and if there are adequate early warning emergency sensors at Hungry Horse Reservoir and Lake Como.

06:56:03 Sen. Connell asked Mr. Davies to contact the area manager for western Montana in order to address Rep. Fleming's questions.

06:56:48 Recess

07:04:42 Reconvene

STUDY OF THE PROCESS FOR CHANGING A WATER RIGHT

- 07:04:51 Mr. Mohr said the committee received a comparison of the change of a water right process in Montana and five other western states. **(Exhibit 14)** He said all states protect other water users from a change of water right, have an analysis or an investigation of that proposed change to protect those rights, and its scheme reflects its adjudication and permitting history.
- 07:10:53 Mr. Mohr discussed the process for changing a water right in Idaho.
- 07:11:40 Mr. Mohr discussed the process for changing a water right in Colorado.
- 07:12:58 Mr. Mohr discussed the process for changing a water right in Utah.
- 07:13:28 Mr. Mohr discussed the process for changing a water right in Wyoming.
- 07:14:16 Mr. Mohr discussed the process for changing a water right in Washington.
- 07:14:58 Mr. Mohr discussed next steps and asked for direction from the committee.

Public comment None

Committee questions and discussion

- 07:16:58 Sen. Connell asked Mr. Mohr about marketing water in Montana.
- 07:18:36 Sen. Connell redirected his question to Brian Bramblett, attorney, DNRC. Sen. Connell asked Mr. Bramblett to provide a report to the WPIC for a future meeting.
- 07:19:41 Rep. Z. Brown asked Mr. Mohr about the appeal process in Colorado.
- 07:20:48 Rep. Z. Brown asked Mr. Mohr to provide information on the average cost in a change application between states and what the change process on average would cost a water user.
- 07:21:44 Rep. Z. Brown asked Mr. Mohr to provide information analyzing the differences between states and how they deal with burden of proof.

UPDATE ON WATER INFORMATION SYSTEM

- 07:22:41 Evan Hammer, Digital Library administrator, Montana State Library, provided background and context for the Water Information System and about water information in the future.
- 07:29:32 Troy Blandford, Water Information System Manager, Montana State Library, provided an overview of the water information system. **(Exhibit 15)**
- 07:32:21 Mr. Blandford provided an example of work products highlighting work at the state library **(Exhibit 16)**
- 07:35:39 Mr. Blandford discussed the table of state uses for the hydrography data set. **(Exhibit 17)**
- 07:37:41 Mr. Blandford discussed federal funding for the hydrography data set.
- 07:38:23 Mr. Blandford continued his discussion on state library work products.

Public comment None

Committee questions and discussion

- 07:46:24 Sen. Connell asked Mr. Blandford about the base layer used for imagery.
- 07:47:08 Sen. Connell asked Mr. Blandford about the frequency for addressing and importing updates for base layer imagery. Mr. Blandford redirected the question to Mr. Hammer.

07:48:38 Sen. Connell commented on the importance of the work done by the state library. Sen. Cohenour agreed and said she is concerned about future funding.

ADMINISTRATIVE MATTERS

Budget Overview

07:50:04 Mr. Mohr provided an update on the budget and said action taken during the special session trimmed the budget by \$1,000. He said the committee is running a little over budget and he will provide more information at the March meeting.

07:50:55 Sen. Connell said some of the constraints are from the extra WPIC meeting during the last interim.

DNRC Water Summit

07:51:27 Mr. Mohr said the Montana Water Summit is scheduled during the same week as the March WPIC meeting and asked the committee if it wants to schedule its meeting around the summit. **(Exhibit 18)** Mr. Mohr said the committee also received an invitation to tour the Tintina Black Butte Copper Mine Project.

07:52:20 Sen. Connell said he recommends having a one-day WPIC meeting on Monday, March 5. Rep. Z. Brown agreed and said programs scheduled during the water summit on Tuesday will benefit the WPIC and its work plan.

07:54:59 Sen. Connell said attending the summit would be out of the purview of the WPIC and committee members can choose if they want to attend.

07:55:50 Sen. Connell said that without objection from the committee members the WPIC will plan for a one-day meeting in March.

Tour of Tintina Black Butte Copper Mine Project

07:56:00 Sen. Connell said the WPIC was invited to tour the Black Butte Copper Mine Project in May. **(Exhibit 19)**

07:57:47 John Shanahan, CEO, Tintina Resources, invited the committee to tour the mine and discussed progress on the Environmental Impact Statement (EIS).

07:59:28 Rep. Z. Brown discussed holding the May meeting in Bozeman.

08:02:01 Sen. Cohenour commented on having enough time during committee meetings to discuss potential draft legislation.

Committee discussion on May meeting

08:02:51 Sen. Connell

08:03:11 By majority vote the committee members agreed to visit the Tintina Black Butte Cooper Mine Project during the May WPIC meeting.

08:03:26 Sen. Connell

08:03:42 Rep. Z. Brown

08:04:22 Sen. Connell

08:04:53 Rep. Glimm

08:05:33 Rep. Z. Brown

08:05:47 Mr. Mohr

08:06:23 Sen. Connell

Revisions to Water Rights Handbook

08:07:00 Mr. Mohr said he is working on revisions to the water rights handbook and it will be available later this year.

Instructions to Staff

None

PUBLIC COMMENT ON ANY ISSUE WITHIN THE JURISDICTION OF THE WPIC

08:08:20 Colleen Coyle, water rights attorney representing the Willow Creek Water Users Association, provided clarification regarding pending litigation with the DNRC.

08:12:57 Sen. Connell thanked the committee for its efforts.

Committee discussion on March meeting

08:13:14 Rep. B. Brown said he recommends having time to discuss the recommendations from the Water Adjudication Advisory Committee. Sen. Connell agreed.

08:13:45 Sen. Cohenour said she would like to continue the discussion on exempt wells with stakeholder groups and add it as an agenda item. Sen. Connell commented on the work being done by the stakeholders.

08:15:37 Rep. Z. Brown commented on the stakeholder groups and the information that was requested earlier in the meeting.

08:16:59 Mr. Mohr said he will contact stakeholders to encourage their participation and to submit information. Sen. Connell commented on receiving the information and having time to review it before the meeting.

08:17:44 Sen. Cohenour asked staff to request the same information from stakeholders that the Clark Fork Coalition provided on their core values in the process and what expectations to meet on behalf of the organization.

08:18:37 Sen. Connell said he recommends having a presentation on the efficacy of the water compact between the state of Montana and the USFS and expectations for the future.

08:19:24 Sen. Connell adjourned the meeting at 4:51 p.m.

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