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**WATER POLICY INTERIM COMMITTEE**  
**67th Montana Legislature**

**SENATE MEMBERS**

Jill Cohenour  
Bruce Gillespie  
Jon Sesso  
Jeffrey Welborn

**HOUSE MEMBERS**

Bob Brown  
Zach Brown  
Carl Glimm  
Bradley Hamlett  
Shane Morigeau  
Walt Sales

**COMMITTEE STAFF**

Corina Hach - Attorney  
Jason Mohr - Research Analyst  
Nadine Spencer - Secretary

## **GEOCODES WORKING GROUP MINUTES LOG**

April 15, 2020  
Capitol Building, Remote Room 137  
Helena, Montana

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### **ROLL CALL**

**Members Present Remotely:**

Rep. Zach Brown, Chair (D)  
Sen. Bruce Gillespie (R)  
Rep. Bradley Hamlett (D)  
Rep. Shane Morigeau (D)  
Rep. Walt Sales (R)  
Sen. Jon Sesso (D)

**Public Members Present Remotely:**

James Ferch, Department of Natural Resources and Conservation (DNRC)  
Kathy Olsen, DNRC  
Bill Gowen, Jr., Montana Land Title Association  
Evan Hammer, Natural Resources Information Service  
Kory Hofland, Department of Revenue  
Hon. Russ McElyea, Montana Water Court  
Hon. Steve Brown, Montana Water Court  
Liane Taylor, Montana Association of Realtors  
Regina Plettenberg, Montana Association of Clerks and Recorders

**Staff Present in Helena:**

Jason Mohr, Research Analyst  
Nadine Spencer, Secretary

**Staff Present Remotely:**

Corina Hach, Attorney

**AGENDA (Attachment 1)****CALL TO ORDER/ROLL CALL**

- 10:06:32 Rep. Z. Brown called the meeting to order at 10:06 a.m. The secretary called the roll. **(Attachment 2)**
- 10:08:44 Rep. Z. Brown discussed the procedure for the meeting and said the working group will discuss the problems and proposed solutions to water right ownership challenges submitted by Krista Lee Evans. The group will determine which ones have consensus and which ones do not. He said staff will provide an overview of the work to date and review the public comments received on the framework submitted by Ms. Evans.
- 10:11:14 Jason Mohr, research analyst, Legislative Services Division, provided a summary of work done to date and said at its meeting in March, the Water Policy Interim Committee (WPIC) directed the working group to use the framework proposed by Ms. Evans as a starting point for making improvements to the ownership update process. **(Exhibit 1)**

**Public Response to Proposed Framework for Water Rights Ownership Updates**

- 10:14:33 Mr. Mohr discussed the public comments received on the proposed framework. **(Exhibit 2)**
- 10:17:26 Mr. Mohr said the working group has been charged with providing recommendations on the proposed framework to the WPIC at its meeting in May.
- 10:19:12 Rep. Hamlett entered the meeting.
- 10:19:31 Rep. Z. Brown commented on the time schedule for the meeting.
- 10:19:59 Rep. Hamlett asked if the Department of Natural Resources and Conservation's (DNRC) regional offices can notify the Department of Revenue (DOR) once a change in the water rights ownership transfer information has been recorded.

- 10:20:35 Jim Ferch, New Appropriations Program manager, Water Resources Division, DNRC, asked Rep. Hamlett to repeat his question.
- 10:21:33 Kathy Olsen, Water Resources Office regional manager, DNRC, described the procedure in the Kalispell office and said the DOR should be getting the information at the same time as the DNRC.
- 10:22:30 Rep. Hamlett said it is a way to ensure that the DOR has the exact same information as the DNRC.
- 10:23:00 Regina Plettenberg, Montana Association of Clerks and Recorders, entered the meeting.
- 10:23:06 Rep. Z. Brown said the discussion can continue later and he would like to keep the meeting today to one hour. He said the working group can decide which recommendations should move forward to the WPIC and it may be necessary to schedule additional meetings.

### **Discussion of Recommendations to WPIC**

- 10:24:53 Mr. Mohr discussed the language he used when he sent the proposed framework out for comments and suggestions.
- 10:25:21 Mr. Mohr provided suggestion 1: to clarify that written consent means chain of title.
- 10:25:39 Rep. Z. Brown said Ms. Evans can provide clarification as needed.
- 10:25:57 Mr. Mohr said written consent might be necessary if someone is taken off or added to a water right ownership.
- 10:26:07 Mr. Mohr provided suggestion 2: If the water right owner and seller are not the same entity then a chain of title must be provided before an ownership update may occur.
- 10:26:19 Mr. Mohr provided suggestion 3: to require a water right split if the entire property and or water right is not sold.
- 10:26:30 Ms. Evans provided additional information on suggestion 3.
- 10:27:23 Mr. Mohr provided suggestion 4: If an entity responds to a DNRC postcard asserting ownership in a portion of a water right, require that entity to provide chain of title to prove the ownership interest.
- 10:27:40 Mr. Mohr provided suggestion 5: Owners may not be removed from a water right abstract unless a chain of title shows the entity is no longer an owner. The Water Court must resolve conflicts between a decree and chain of title.
- 10:27:55 Mr. Mohr provided suggestion 6: DNRC shall keep all records, maps, and research used to determine ownership in each water right claim file.
- 10:28:08 Mr. Mohr provided suggestion 7: DNRC shall revise the letter sent to "potential" water right owners to better describe the circumstances. The letter must not reference the DOR records.
- 10:28:40 Mr. Mohr provided suggestion 8: The Water Court shall provide a map and a marked up abstract when submitting the result of a court order to the DNRC.

- 10:28:49 Mr. Mohr provided suggestion 9: If a portion of a property is sold, appurtenant water right shall be a divided interest. Co-ownership of a water right must be clarified in the deed and other forms. A split of a water right must be clarified in the deed. Educate sellers that an appurtenant water right that is not split or divided (if a portion of a property is sold) will have the buyer as a co-owner. A seller must file a form 641 (DNRC ownership update divided interest form) to show a split of a water right. All splits or divisions of a water right are contingent upon adjudication and a final decree.
- 10:29:49 Mr. Mohr provided suggestion 10: to amend Section 85-2-424, MCA, to provide for submission of a “recorded” deed.
- 10:30:06 Mr. Mohr provided suggestion 11: to amend Section 85-2-424, MCA, to provide for a “correct and complete” form during an ownership transfer.
- 10:30:40 Mr. Mohr provided suggestion 12: The DNRC and Water Court shall develop rules and process to identify how to rectify errors related to ownership on abstracts.
- 10:30:54 Mr. Mohr provided suggestion 13: The Water Court shall outline a policy for addressing claims errors identified by the DNRC and submitted to the court.
- 10:31:05 Mr. Mohr provided suggestion 14: The WPIC shall request a legislative audit of the underlying processes associated with ownership updates, the water rights database, and Water Court platform requirements.
- 10:31:21 Mr. Mohr provided suggestion 15: The DNRC shall update its 1993 policy on ownership updates to facilitate consistency between employees and regional offices.

### **Discussion of Proposed Framework**

- 10:31:47 Rep. Z. Brown opened the discussion.
- 10:32:34 Rep. Z. Brown opened discussion on questions and concerns regarding suggestion 1.
- 10:32:46 Bill Gowen, Montana Land Title Association, said the definition of chain of title can be interpreted in different ways and is not clearly defined in statute. He said the term should be “chain of conveyances” when referring to a water right.
- 10:34:03 Rep. Z. Brown asked if there were questions or concerns on the recommendation.
- 10:34:13 Ms. Evans said defining the term in statute would be critical, but to make sure that the change of conveyance relates to actions done on the deed.
- 10:35:30 Russ McElyea, chief water judge, Montana Water Court, said he did not believe that requiring chain of title or defining chain of title or written consent would be helpful and would add to confusion in the future.
- 10:37:41 Ms. Olsen said when a deed is silent the water right usually transfers with the place of use. She said when there is a sever or split of a water right it is done in another recorded document.

10:38:39 Rep. Z. Brown said there is not consensus on suggestion 1 and will require more discussion later.

10:39:07 Ms. Evans said the impetus behind the suggestion was to require written consent if someone is added or removed from a water right and in those instances when chain of title can be an option.

10:39:53 Rep. Z. Brown said getting more specific on defining those instances would be a next step.

10:40:05 Rep. Z. Brown opened discussion on questions and concerns regarding suggestion 2.

10:40:20 Mr. Ferch said he provided information on the counties that have deeds available online and said there are issues related to the fees required to access the deeds. He said some of the smaller counties do not have deeds available online.

10:44:07 Ms. Plettenberg said her office can encourage counties to waive the fee in order to give the DNRC access to the database.

10:45:35 Rep. Z. Brown asked Ms. Plettenberg which county she is from.

10:45:54 Rep. Z. Brown asked Mr. Ferch about the working relationship the DNRC has with the 18 counties that have deeds available online and if there is a fee required to access the deeds.

10:46:22 Rep. Sales asked for a list of the 18 counties. Mr. Ferch he will provide the information.

10:46:46 Ms. Plettenberg said she would also like the information.

10:46:52 Rep. Z. Brown said there may be an opportunity for the working group to collaborate with the Montana Association of Clerks and Records and the DNRC on the communication gap.

10:47:31 Ms. Evans said providing the chain of title in proposal 2 is specific to instances when the water right owner and the seller do not match.

10:48:27 Rep. Z. Brown asked the DNRC if it would affect about a quarter of their updates. Mr. Ferch said it would.

10:48:57 Rep. Z. Brown said the suggestion is headed in the right direction, but needs more work and recommended that the DNRC, clerk and recorders, and committee staff work to come up with a plan.

10:49:37 Ms. Evans said she recommends that the entity changing the water right also does the title search.

10:50:34 Rep. Z. Brown thanked Ms. Evans and requested that the working group submit ideas to staff on how to move forward.

10:51:10 Rep. Z. Brown opened discussion on questions and concerns regarding suggestion 3.

10:51:33 Rep. Z. Brown said some of the comments received indicate it could create more issues in the process than benefit and recommended leaving it off the consent list for now.

10:52:12 Mr. McElyea said he agreed with the comments received from Abigail Brown that requiring a split, if the entire property is not sold, will create more problems than it solves.

10:53:11 Mr. Ferch said current statute does require a person that divides an interest in a water right to file a form with the DNRC.

10:54:46 Rep. Z. Brown asked Mr. Ferch about the statute.

10:55:32 Mr. McElyea said the Section is 85-2-424 and agreed with Mr. Ferch that the requirement that the participants to the transaction submit certain information in the event of a division of a water right is already in statute. He said suggestion 3 also addresses a water right split if the entire property is not sold and said that is a different situation.

10:57:21 Rep. Z. Brown asked about the suggestion from Ms. Brown regarding a mechanism that would have all splits go directly to the Water Court.

10:57:52 Ms. Evans provided clarification on her proposed solution.

11:00:09 Mr. Ferch said he agreed with Ms. Evans, but there would need to be a separate process for certain new appropriations.

11:01:20 Ms. Olsen said in the regional offices it is more important to add owners who have an interest in the place of use or a water right than to split the water right.

11:01:49 Mr. McElyea said he agreed and that identifying the correct owner is key.

11:04:27 Ms. Evans agreed. She said the problem is getting the proper information to the DNRC and whether the legislature can set up a process for updating a water right with everyone who has a place of use.

11:06:31 Rep. Z. Brown opened discussion on next steps and said he recommends that the working group meet again before the WPIC meeting in May.

11:07:17 Mr. McElyea said the three problems are bad information from stakeholders, delay in updating the database to accurately reflect ownership due to non-payment of a fee, and the use of geocodes.

11:12:38 Sen. Gillespie said he recommends getting representatives together from the DNRC, Water Court, the counties, and the chairman and vice-chairman of the WPIC in order to zero in on the problems and different solutions.

11:14:25 Mr. Gowen said in order to get water right updates done quickly and accurately he recommends increasing fees and costs or changing statute so that the DNRC can make the changes and charge the fee later.

11:15:36 Sen. Sesso said he recommends continuing to make progress on the framework provided by Ms. Evans and follow Sen. Gillespie's suggestion for trying to get to a consensus on the items that are worthy of attention.

11:20:03 Rep. Z. Brown agreed and asked Mr. Mohr about the intention of the working group to facilitate a discussion among the experts and about who can serve as chair.

11:21:04 Mr. Mohr said the working group is bound by open meeting laws and can be facilitated by anyone.

11:22:06 Rep. Z. Brown said he does not need to be the facilitator and asked about scheduling another meeting.

11:22:40 Ms. Evans said she recommends scheduling a longer meeting and to only focus on a couple of suggestions.

11:24:10 Rep. Z. Brown agreed

11:24:24 Rep. Sales agreed and said he recommends focusing on splits and having the stakeholders work on it.

11:26:17 Sen. Gillespie said he agrees with Sen. Sesso's comments and on having stakeholder involvement.

11:27:12 Rep. Z. Brown asked Mr. Mohr about scheduling the next meeting and the amount of notice required.

11:28:28 Rep. Hamlett said he agrees that meetings need to be longer and commented on the importance of legislator participation.

11:29:39 Rep. Z. Brown said he recommends scheduling a two-hour meeting for the week of the April 27 and to focus on a limited number of proposals. He gave staff discretion to schedule meetings at regular intervals.

11:30:46 Mr. Mohr said he will schedule the next two meetings.

11:31:01 Rep. Z. Brown said meetings can be scheduled at closer intervals and noticed at the same time. He said the agenda for the next meeting will focus on suggestions 4-7.

11:31:59 Ms. Evans asked that the working group receive the detailed document she provided. [\(see exhibit 1\)](#)

11:32:45 Rep. Z. Brown asked Mr. Mohr to include the original comments from Ms. Evans with the meeting notice.

## **ADJOURNMENT**

11:33:33 Rep. Z. Brown adjourned the meeting at 11:33 a.m.